CLERK'S COPY.

VOLUME I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

BLANK PAGE

INDEX

Page

Petition for the enforcement of an Order of the National Labor Relations Board 1

Certificate of the National Labor Relations Board, dated 1/18/40 6

Amended Charge filed by San Antonio Newspaper Guild 8

Complaint and Notice of Hearing issued by the National Labor Relations Board, dated 9/22/38 11

Amended Charge filed by San Antonio Newspaper Guild (Omitted) 14

Answer of Respondent, dated 9/29/39 16

Order designating William P. Webb as Trial Examiner issued by the National Labor Relations Board, dated 10/4/38 24

Intermediate Report of Trial Examiner Webb, dated 11/25/38 25

Exceptions of Respondent The Express Publishing Company to the Intermediate Report 42

Letter from Denman Franklin Denman Attys., for Respondent Express Publishing Co., to National Labor Relations Board, dated 11/30/38 requesting Oral Argument 49

Notice of hearing for purpose of Oral Argument, dated 3/10/39 50

INDEX—Continued

Page

List of Appearances at Oral Argument held on 3/21/39 51

Decision entered 7/28/39 52

Findings of Fact 54

Conclusions of Law 70

Order 71

Affidavit of Service and U. S. Post Office Return Receipts thereof 73

INDEX—Continued

VOL. I

	Page
Proceedings in U. S. C. C. A., Fifth Circuit	77
Answer of respondent	77
Argument and submission	85
Opinion of the Court, Holmes, J.	85
Decree of the Court	87
Petition for rehearing	88
Order denying rehearing	96
Clerk's certificate	96
Stipulation as to record on petition for certiorari	97
Order allowing certiorari	98
Stipulation as to record on writ of certiorari	99

VOL. II

Transcript of testimony taken at hearing before Board	1
Caption and appearances	1
Colloquy and offers in evidence	1
Testimony of—	
Frank G. Huntress	13
Thornton Hall	46
Colloquy	65

VOL. III

Stipulation as to certain facts	1

EXHIBITS

	Page		Page
A	11	P	104
B	12	Q	105
C	13	S	106
D	14	T	107
E	14	U	107
G	22	V	125
H	23	W	126
I	50	X	127
J	52	Y	129
K	53	Z	130
L	54	AA	132
M	60	CC	134
N	61	DD	135
O	62	EE	136

VOL. IV

Contract between Express Publishing Co. and San Antonio Typographical Union No. 172	1

BLANK PAGE

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. EXPRESS PUBLISHING COMPANY, a corporation, Respondent.	9408 November Term, 1939

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Filed January 22, 1940)

To the Honorable, the Judges of the United States Circuit Court of Appeales for the Fifth Circuit:

The National Labor Relations Board, pursuant to the

National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of an order issued by it against respondent, Express Publishing Company, a corporation, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Express Publishing Company and San Antonio Newspaper Guild," Case No. C-1071."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Texas corporation, engaged in business in the State of Texas, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with the Court herein, to which reference is hereby made, and including, without limitation, a complaint and notice of hearing, respondent's answer, hearing for the purpose of taking testimony and receiving other evidence, intermediate report and respondent's exceptions thereto, and oral argument before the Board, the Board, on July 28, 1939, duly stated its findings of fact and conclusions of law and issued the following order, directed to respondent and its officers, agents, successors, and assigns:

1a

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor relations Board hereby orders that Express Pub-

lishing Company, San Antonio, Texas, and its officers, agents, successors, and assigns shall

1. Cease and desist from:

(a) Refusing to bargaining collectively with San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News, with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in a signed agreement, if requested to do so by the Guild;

(b) Post immediately notices to its employees

in conspicuous places within the plant, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting; stating (1) that respondent will cease and desist as aforesaid, and (2) that the respondent will bargain collectively with San Antonio Newspaper Guild as the representative of its city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, in the editorial departments of the San Antonio News and San Antonio Express, with respect to rates of pay, hours of employment, and other conditions of employment and that if an understanding is reached on any such matters the respondent will embody said understanding in a signed agreement, if requested to do so by the Guild;

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On July 28, 1939, the Board's decision and order were served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Leroy G. Denham, its attorney, in San Antonio, Texas.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions de-

termined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon the order made thereon, set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent and its officers, agents, successors and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By s/ Robert B. Watts,
Associate General Counsel

Dated at Washington, D. C.,
this 19th day of January 1940.

1c DISTRICT OF COLUMBIA, ss:

Robert B. Watts, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he had read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

s/ ROBERT B. WATTS

Subscribed and sworn to before me this 19 day of January 1940.

(Signed) JOHN E. LOUYER

(Seal) Notary Public, District of Columbia

My Commission expires August 31, 1944.

1d IN THE UNITED STATES CIRCUIT COURT

OF APPEALS

FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v. } 9408

EXPRESS PUBLISHING COMPANY,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Express Publishing Company and San Antonio Newspaper Guild," the same being Case No. C-1071 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Amended charge filed by San Antonio Newspaper Guild, sworn to August 17, 1938.

2. Complaint and notice of hearing issued by the National Labor Relations Board, dated September 22, 1938.

3. Respondent's answer to the complaint, sworn to September 29, 1939.

4. Certified copy of order designating William P. Webb Trial Examiner for the National Labor Relations Board, dated October 4, 1938.

1e Documents listed hereinabove under items 1-4, inclusive, are contained in the exhibits and included under the following items:

5. Stenographic transcript of testimony before William P. Webb, Trial Examiner for the National Labor Relations Board, on October 6, 1938, together with all exhibits introduced in evidence.

6. Copy of intermediate report of Trial Examiner Webb, dated November 25, 1938.

7. Copy of respondent's exceptions to the intermediate report.

8. Copy of respondent's letter, dated November 30, 1938, requesting oral argument.

9. Copy of notice of hearing for purpose of oral argument, dated March 10, 1939.

10. Copy of list of appearances at oral argument held March 21, 1939.

11. Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board July 28; 1939, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 18th day of January, 1940.

NATHAN WITT, Secretary

(Seal) National Labor Relations Board

2 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

16th Region

In the Matter of	
EXPRESS PUBLISHING COMPANY	
and	Case No. XVI C-293
	Filed August 11, 1939
SAN ANTONIO NEWPAPER GUILD	

AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Express Publishing Company of San Antonio, Texas has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that

On March 14, March 30, April 21, and May 23 of 1938, it by its officers, agents and employees refused to bargain in good faith collectively with the authorized agents (representatives) of the San Antonio Newspaper Guild, chosen by a majority of its employees in its editorial departments, to represent them for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the acts set forth in the paragraph above, and by other acts and conduct, it by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

NATIONAL LABOR RELATIONS BOARD

Case No. XVI
Board V
Petitioner
Respondent
Intervenor
Exhibit IA

IN THE MATTER OF

EXPRESS PUBLISHING CO.

SAN ANTONIO NEWSPAPER GUILD

Date 10-6-1938

DANIEL W. ROSS,
Official Reporter
By HALL ETTER

The undersigned further charges that said unfair labor

practices are unfair labor practices affecting commerce within the meaning of said Act.

SAN ANTONIO NEWSPAPER GUILD

By: FRANK G. RAGSDALE, President

11 Circle Street

San Antonio, Texas

Subscribed and sworn to before me this 17th day of August, 1938 At San Antonio, Texas

JAMES A. SMITH

Notary Public, Bexar County,

Texas

3 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

In the Matter of EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. XVI-C-293

COMPLAINT

It having been charged by the San Antonio Newspaper Guild, a labor organization, that the Express Publishing Company, hereinafter referred to as the respondent, has engaged and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by its Regional Director for the Sixteenth Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

1. The respondent is and has been since 1865 a corporation organized under and existing by virtue of the laws of the State of Texas with its domicile and principal place of business in the City of San Antonio, County of Bexar, State of Texas, and is now and was at all times hereinafter mentioned engaged in the gathering of news, the publication, sale and distribution of two daily newspapers, the San Antonio Express, a morning paper, and the San Antonio News, an evening paper; and in the purchase of newsprint, ink, and various other articles used in the above-described operations, and in the purchase and publication of news items and columns, feature stories and comics from international and interstate news services
4 for use in the publication of its aforementioned newspapers.

2. The respondent, in the course and conduct of its business, causes and has continuously caused a large part of the raw materials and newspaper items used in the publication of its newspapers to be purchased, transported and transmitted in interstate commerce from and through states of the United States other than the State of Texas, and from and through foreign countries to its plant in San Antonio in the State of Texas, and causes and has continu-

ously caused a large number of its newspapers to be distributed and transported from its plant in San Antonio, Texas, to, into and through states of the United States other than the State of Texas.

3. The San Antonio Newspaper Guild is a labor organization as defined in Section 2, subsection (5) of the National Labor Relations Act.

4. All those employees of the respondent engaged in its editorial departments, namely, City Editors, Reporters, Copy Desk Men, Rewrite Men, Artists, Photographers, Copy Boys, Librarians, Sports Editors and Writers and Society Editors and Writers, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, hereinafter referred to as the Act, in order to insure to respondent's employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of said Act.

5. On or about February 15, 1938, and at all times thereafter, a majority of the employees in said unit had designated said San Antonio Newspaper Guild as their representative for collective bargaining with the respondent, such designation having been made by signed authorization of each of the employees so designating said union. Thus on or about February 15, 1938, said San Antonio Newspaper Guild became and has at all times thereafter been a representative for collective bargaining of a majority of employees in said unit and has by virtue of Section 9 (a) of said Act been the exclusive representative of all employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

6. On or about March 14, 1938, and at various dates thereafter, particularly, March 30, 1938, April 21, 1938,

and May 23, 1938, while the respondent was engaged in its business as above set forth, said San Antonio Newspaper Guild, acting by and through its duly authorized representatives Frank Ragsdale, Henry B. Dielmann and others, requested respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment with said San Antonio Newspaper Guild as the exclusive representative of all the employees in the unit above described. On said dates and at all times thereafter, respondent did refuse, has refused and does now refuse to bargain collectively with said San Antonio Newspaper Guild as the exclusive representative of all the employees in said unit in that, though respondent met with the representatives above named and expresses itself as willing to meet again, the respondent has consistently refused to agree to any request made by the union and has refused to offer any character of counter-proposal to said union.

7. Said acts of the respondent as set forth in paragraph 6 above constitute unfair labor practices within the meaning of Section 8, subsection (5) of said Act.

8. The respondent, by its officers, agents and employees, namely, Thornton Hall, on April 4, 1938, called a meeting of Editorial Department employees and stated there, "Existing independent employment relations may be continued by the individual employees or by employees as a group," and further, "No one can compel you to join any organization;" and further referring to respondent' treatment of its employees, stated, "Each of you know we were not forced to do this by any labor organization, and no labor organization can force us to do these things;" and made further statements, well known to respondent, (intending to) having the effect of discouraging membership in said San Antonio Newspaper Guild.

9. By the refusal to bargain collectively with the San Antonio Newspaper Guild as set forth in paragraph 6 above and by the statements and other activi-

ties described in paragraph 8 above, and by various and sundry other means well known to respondent, respondent did interfere with, restrain and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such acts did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1), of said Act.

10. The activities of respondent set forth in paragraphs 6, 7, 8, and 9 above, occurring in connection with the operations of respondent described in paragraphs 1 and 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The aforesaid acts of respondent enumerated in paragraphs 6, 7, 8, and 9 above constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5), and Section 2, subsections (6) and (7), of said Act.

WHEREFORE, the National Labor Relations Board on this 22nd day of September, 1938, issues its complaint against the Express Publishing Company, the respondent herein.

7 AMENDED CHARGE FILED BY SAN ANTONIO NEWSPAPER GUILD, omitted from the printed record, being heretofore copied at page —.

See original transcript page 2.

8 NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 6th day of October, 1938, at ten o'clock in the forenoon, in the 37th District Court Room, County Court House, in the City of San

Antonio, Texas, a hearing will be conducted before the National Labor Relations Board by a trial examiner to be designated by it in accordance with said Rules and Regulations—Series 1, as amended, Article IV, Section 2, and Article II, Section 23, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Sixteenth Region, with offices at 420 United States Court House, Fort Worth, Texas, acting in this matter as Agent of the National Labor Relations Board, an answer to the attached complaint on or before the 1st day of October, 1938.

Enclosed herewith for your information is a copy of Rules and Regulations—Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly invited to Article II of said Rules and Regulations.

A copy of the amended charge filed herein is also attached hereto.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Sixteenth Region on the 22nd day of September, 1938.

EDWIN A. ELLIOTT, Regional Director

Sixteenth Region, National Labor

(Seal) Relations Board

9 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

In the Matter of Express Publishing Company and San Antonio Newspaper Guild	Case No. XVI-C-293

ANSWER

The Express Publishing Company, in response to the complaint filed herein, says:

A. The Board has no jurisdiction hereof, because the matter does not involve interstate commerce or anything within the Federal jurisdiction.

B. The Board does not have jurisdiction, because the respondent's business, being a local business within the State of Texas, is not subject to jurisdiction of said Board.

C. The Board does not have jurisdiction, because if any portion of respondent's business consists of interstate commerce, its relationship to the matters involved herein is so indirect and inconsequential that the matter involved herein is not within the jurisdiction.

C (1) The complaint in paragraph 8 is defective and fails to comply with Section 4 (c) of Article II of the Board

Rules in averring Hall "made further statements" without identifying the statements.

10 D. The complaint, in paragraph 6, is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that the San Antonio Newspaper Guild, acting by and through its duly authorized representatives Frank Ragsdale and Henry B. Dielman and others, requested respondent to bargain collectively, and fails to state the names of the individuals referred to by the term "and others", so that the respondent is unable to properly answer or prepare for trial thereon, and the said complaint should be dismissed or the said phrase "and others" stricken out, or an amendment of the complaint be required to specify such names.

E. The complaint in paragraph 9 is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that by an alleged refusal to bargain collectively as set forth in the allegations of paragraph 6 and by the allegations in paragraph 8, "and by various and sundry other means well known to respondent" that respondent interfered with, restrained, coerced, etc. employees, and fails to specify or designate the various and sundry other means referrd to, and threfore fails to comply with said rule requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved, and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent, so that respondent cannot properly plead or prepare for trial thereon, and re-

11 spondent says that said complaint should be dismissed, or the words "and by various and sundry other means well known to respondent" should be stricken out, or that an amendment should be required to the said complaint requiring compliance as aforesaid with the said rule.

F. The amended charge, a copy of which is attached to the complaint, after specifying certain alleged actions on the part of the respondent, states that by the acts set forth in said paragraph "and by other acts and conduct it by its officers, agents and employees" interfered with, restrained and coerced ites employees, and fails to specify or designate the other acts and conduct referred to, and therefore fails to comply with said rule requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved, and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent, so that respondent cannot properly plead or prepare for trial thereon, and respondent says that said complaint should be dismissed, or the said words "and by other acts and conduct it by its officers, agents and employees", should be stricken out, or that an amendment should be required to the said complaint requiring compliance as aforesaid with the said rule.

WHEREFORE, the respondent prays that the Board sustain each of the foregoing objections and motions to dismiss.

12 Subject to the foregoing objections to the jurisdiction and motions, and without waiving them, in response to the complaint respondent says:

1. Respondent admits the allegations of paragraph 1.

2. Answering paragraph 2, admits that the respondent has caused a large part of such raw materials as blank paper to be purchased and delivered from out of the State of Texas to respondent in the State of Texas, but avers that the said blank paper is merely incidental to respondent's business, the fundamental and major portion thereof being the writing of news items, editorial matter and other writing published by the respondent and the print-

ing thereof, said blank paper being merely incidental thereto;

Denies that the larger portion of the newspaper items used in the publication thereof are purchased, transported and transmitted in interstate commerce from without the State of Texas, averring on the contrary that the greater portion thereof are in part written by local employees and local staff within the State of Texas employed by respondent, and in part purchased from news agencies having offices within the State of Texas and delivered by such agencies from their offices within the State of Texas, and the small portion thereof purchased from out of the State of Texas is incidental and insignificant in comparison with the total and forms an insignificant and incidental portion of the respondent's business;

Denies that it obtains any other materials or items of consequent from without the State.

In response to the allegation that it causes and has caused a large number of its newspapers to be
13 distributed and transported from its plant in San Antonio, Texas to points outside of the State of Texas, respondent avers that only a very small percentage of its newspapers are caused to be distributed by it or transported by it outside of the State of Texas, the said portion being so small as to be inconsequential and incidental and not to materially affect its business or the matters involved herein or interstate commerce.

3. Respondent is without information as to the facts alleged in paragraph 3.

4. Respondent is without information as to the facts alleged in paragraph 4.

5. Respondent is without information as to the allegation in paragraph 5 of the complaint to the effect that the

majority of the employees therein mentioned designated the San Antonio Newspaper Guild as their representative in the manner therein set out and that said Guild was and is their representative for the purposes therein specified, except that the negotiators referred to in the said complaint and the said Guild stated to respondent the substance thereof, and therefore, being without personal information the respondent is unable to either admit or deny the same.

6. Admits the allegations that on or about the dates specified the Guild, acting through the representatives named in paragraph 6, requested respondent to bargain collectively with said Guild; is without information as to any requests on any other dates than those specified or of the other dates referred to by the complaint. And in response to the allegation that respondent refused to bargain collectively in that respondent refused to
14 agree to any request made by the Union, says that respondent did refuse to agree to the contract tendered by the Union, but says that respondent did negotiate with reference thereto with the said negotiators in full accord with the terms of the National Labor Relations Act, and the representatives of said Union insisted on tendering the same contract although they admitted the terms thereof were out of question and not justified or warranted, and that they could not expect an acceptance thereof; and if by said allegation in the complaint that respondent refused to agree to any request made by the Union the said contract is referred to, then respondent admits that it refused to agree to the said contract; but if any other request is referred to, then respondent is without information as to what request is referred to and therefore is without information to respond thereto, but says that it did agree to various requests with reference thereto in that, in accordance with the request of said Union it negotiated at each of said meetings on the dates mentioned in said contract with reference thereto and complied with the requests of the Union to meet and nego-

tiate in reference thereto, although the said negotiations did not result in an agreement as to entering into the said contract.

In response to that portion of said paragraph in which it is alleged that respondent refused to bargain collectively in that respondent has refused to offer any character of counter proposal to said Union, respondent says that it offered to continue the present terms of employment, and further says that its action did not constitute a refusal to bargain collectively.

15 7. Denies the allegations of paragraph 7.

8. Admits that Thornton Hall made a statement at the meeting referred to containing words quoted in said paragraph, but says that said words as quoted are mere parts of sentences and are quoted in a garbled manner so that they do not express the full and fair sense of the said statement.

Denies that any statements so made were intended to have the effect of discouraging membership in said Guild.

9. Denies the allegations of paragraph 9.

10. Denies the allegations of paragraph 10.

11. Denies the allegations of paragraph 11.

12. In further response to the said complaint, respondent says that respondent met with the negotiaters named in the complaint and negotiated with them at great length in full compliance with the National Labor Relations Act; that the said negotiaters presented a form of contract and requested respondent to accept it; that respondent after giving careful study to said contract refused to agree to its terms, stating in writing in detail the reasons why the contract was considered unreasonable;

that the negotiaters admitted that the terms of the contract were unjustified and that respondent could not be expected to accept them; that at the subsequent meeting the negotiaters still presented the same contract and further negoiations were had with reference to it and the respondent still refused to agree to it on the ground that its terms were unreasonable and the negotiaters for the Union again admitted that its terms were unjustified; that no other proposal was ever submitted to respondent; that the Guild's representatives, and not the respondent, terminated the said negotiations, and the respondent ex-
16 pressed its willingness to continue the negotiations if the Guild desired to continue them and to again meet for further negotiations if the Guild desired to meet therefor. And respondent says that it did negotiate in full compliance in all things with the said Act and the fact that it did not agree to the contract proposed by the Guild does not constitute a violation of the National Labor Relations Act.

Respectfully submitted,

EXPRESS PUBLISHING COMPANY

By Frank G. Huntress

President

Subscribed and sworn to before me by Frank G. Huntress, President, this 29 day of September, A. D. 1938.

W. A. DRUCE

Notary Public within and for

(Seal) Bexar County, Texas

DENMAN, FRANKLIN DENMAN

LEROY G. DENMAN

Attorneys for Respondent

Post Office Address:

San Antonio, Texas

17 UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

I, Nathan Witt, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designation Trial Examiner in the Matter of EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD, Case No. XVI-C-293

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this fourth day of October A. D. 1938, at Washington, D. C.

NATHAN WITT

(Seal) Secretary.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. XVI-C-293

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the Sixteenth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that William P. Webb act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., October 4, 1938.

By direction of the Board:

GEORGE O. PRATT

Chief Trial Examiner.

NATIONAL LABOR RELATIONS BOARD

Case No. XVI-C-293 { Board √ / Petitioner / Respondent / Intervenor } Exhibit No. 2

IN THE MATTER OF SAN ANTONIO EXPRESS

Date 10-6-38 Witness.....

DANIEL W. ROSS,

Official Reporter

By HALL ETTER

19 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

In the Matter of	
EXPRESS PUBLISHING COMPANY	
and	Case No. XVI-C-293
SAN ANTONIO NEWSPAPER GUILD	C-1071

INTERMEDIATE REPORT

Upon charges duly made and acting pursuant to proper authority, the National Labor Relations Board, by Edwin

A. Elliott, its Regional Director for the Sixteenth Region, issued its complaint against Express Publishing Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon the respondent.

The complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act.[1] The respondent's answer admitted some of the specific facts alleged in the complaint, but denied that it had engaged in any unfair labor practices.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board, conducted a hearing on October 6, 1938, at San Antonio, Texas, at which place all parties were afforded an opportunity to participate in the hearing, to call, examine and cross-examine witnesses, and introduce other evidence.

20 At the conclusion of the hearing, the parties were afforded a reasonable opportunity to argue orally before the undersigned, and were advised by the undersigned that they would be given an opportunity for oral argument before the Board upon request to the Board made within ten (10) days from the receipt of the Intermediate Report. The parties were further advised that they might file briefs with the undersigned within ten (10) days from the close of the hearing. The undersigned has had the benefit of a brief submitted by counsel for the respondent. At the beginning of the hearing, counsel for respondent made several motions to dismiss the complaint, also certain paragraphs of the complaint, and that certain portions of the amended charge be stricken or the complaint be amended. Ruling was reserved on said motions, which are, at this time, denied.

1 The National Labor Relations Act is herein referred to as the Act; the National Labor Relations Board as the Board; the San Antonio Newspaper Guild as the Guild; and the Express Publishing Company as the respondent.

Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

1. Respondent

1. The respondent is, and has been since 1865, a Texas corporation. Its principal office and place of business are in the City of San Antonio, State of Texas. Respondent owns and publishes two daily nawspapers in San Antonio, Texas, known as the San Antonio Express, a morning paper, and the San Antonio News, an evening paper. Frank G. Huntress is the president and manager of the respondent company; Thornton Hall is secretary and assistant to the president; A. W. Grant is managing editor of the San Antonio Express and M. M. Harris is chief editorial writer. A. W. Walliser is managing editor of the San Antonio News.

II. The Organization Involved

2. The San Antonio Newspaper Guild, affiliated with the Committee for Industrial Organization, through the American Newspaper Guild, is a labor organization, within the meaning of the Act, admitting to its membership all editorial, advertising, carrier, office, and circulation department employees of respondent.

III. The Unfair Labor Practices

A. Interference, restraint and coercion

3. The Guild was organized in 1936 among certain employees of all the newspapers published in San Antonio, Texas. On February 28, 1938, a contract was entered into between the Guild and the Light Publishing Company,

publishers of the San Antonio Light, the only competitor of respondent in San Antonio, Texas. This contract expires on March 7, 1939.

4. On April 4, 1938, the following statement was read by Thornton Hall, secretary and assistant to the president of respondent company, at a meeting of respondent's employees:

> We have called you to this meeting for the purpose of offering you further explanation and interpretation than perhaps you have received to date of a matter which vitally concerns each of you as well as ourselves. We have reference to the National Labor Relations Act, known as the Wagner Act. The first thought we wish to leave with you is this: Under the provisions of the Wagner Act an employees is not required to join a labor union, or to pay dues or assessments to any organization unless he chooses to do so of his own free will. Existing independent employment relations may be continued by the individual employee, or by employees as a group. In other words, while the Act provides employees with the right of self-organization, to form, join or assist labor organization and further povides employees with the right to bargain collectively through representation of their own choosing, the Act does not require nor force an employee to join any labor organization. The employee has the right to join or refuse to join any organization and is to be guided only by the dictates of his own free will. Whether the employee joins or refuses to join any organization will have no effect whatever on his employment..
>
> No one can compel you to join any organization and no one can prevent you from joining any organization.
>
> The second thought we wish to leave with you is this: An employer may hire or discharge or transfer

employees to any task he may see fit, discharge an employee in the interest of efficiency or even from personal animosity or sheer caprice, but employees cannot be discharged or hired for the purpose of influencing their right under this Act.

In other words, membership in any organization does not guarantee an employee that he cannot be discharged. He can be discharged just as readily if he has organization membership as he can if he does not have the membership. The only protection an employee has ever had or ever will have against discharge is to perform his work in a satisfactory manner and to conduct himself in accordance with the general rules and requirements of his employer.

The third thought we would like to leave with you is this: It has always been and always will be a policy of this company to provide as agreeable and comfortable working conditions as possible for our employees. Each of you has been in our employ a number of years and each of you know that we have always endeavored to make your association with us as pleasant as possible and that we have always been interested in your welfare. As an illustration, each of you know we carried you through the depression rather than throw you out of employment, although our business did not justify us in doing so. Further, you know that we have carried some of you through sickness. Further, each of you know that it is our policy to give each one a vacation with full pay. All of this is done because of our interest in your welfare and to promote pleasant relationship between you and our company. Each of you know we were not forced to do this by any labor organization and no labor organization can force us to do these things.

Summing up, an employee cannot be forced to join a labor organization but it is a matter of exercising

his own free will; membership in a labor organization does not guarantee an employee employment; and, membership in a labor organization does not guarantee an employee the interest in his welfare by his employer.

We intend to give every consideration to Guild members and we want it understood that non-Guild members will also receive every consideration.

We hope we have given you some beneficial information and we appreciate your coming here for this meeting.

5. The foregoing statement was read by Hall to the employees after he had attended the two meetings between respondent and representatives of the Guild, which occurred on March 14 and 30, 1938, respectively, also after Hall had conferred with Frank G. Huntress, president of the respondent company.

6. Hall testified that the reason why he prepared and read this statement was because the respondent had done certain things for its employees, and "others" were claiming the credit for them and he thought the respondent should have that credit. He further stated that: "When I said 'others,' I meant the other employees; some of the employees who had been making remarks
23 that in the event of organization of the Guild they could look forward to those things and we were already giving them to them."

7. It is quite apparent from the evidence that respondent caused the aforesaid statement to be read to its employees for the purpose of checking and discouraging the activities of the Guild in the plant.

8. By the activities herein above-described, the respondent has interfered with, restrained and coerced its

employees in the exercise of the rights guaranteed in Section 7 of the Act.

9. By said activities, respondent has discouraged membership in a labor organization known as the San Antonio Newspaper Guild.

B. The refusal to bargain with the Guild

1. The appropriate unit

10. It was stipulated and agreed by all parties in interest that all of the employees of respondent engaged in the editorial department of its two newspapers, namely, city editors, reporters, copy desk and rewrite men, artists, photographers, copy boys, librarians, society editors and writers, and sports editors and writers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

11. The complaint alleges that the respondent on or about March 14, 1938, and thereafter, refused to bargain with the Guild as the representative of its employees comprising the aforesaid unit.

2. Majority representation

12. It was stipulated and agreed by all parties in interest that the aforesaid appropriate unit consists of a total of 42 employees of respondent, and that 31 of these employees were, on February 15, 1938, and thereafter, members of the Guild and had designated the Guild as their representative for the purpose of collective bargaining.

13. A majority of said employees within
24 said appropriate unit have designated the San Antonio Newspaper Guild as their representative for the purpose of collective bargaining with respond-

ent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since February 15, 1938, the San Antonio Newspaper Guild has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain in March 14, 1938, and thereafter

14. On March 1, 1938, the Guild wrote to respondent and stated that the editorial department employees of respondent's two newspapers had designated the Guild as their representative for purposes of collective bargaining with respondent, and the Guild had chosen Henry Dielman, a San Antonio attorney, Sidney Berkowitz, an employee of a San Antonio department store and Frank G. Ragsdale, president of the Guild, as its representatives for the purpose of negotiating a contract between the Guild and respondent, and requested respondent to set a time and place for the meeting. Also some of respondent's employees in the editorial department desired to attend the meeting as observers.

15. On March 8, 1938, the Guild wrote a similar letter to respondent. On March 10, respondent complied with the Guild's request and set March 14, as the date of the meeting in respondent's directors' room. The meeting was held as scheduled and Huntress, Walliser, Grant and Hall represented the respondent and Ragsdale, Berkowitz, and Dielman represented the Guild. Five of respondent's employees attended as observers.

16. The proceedings were taken down by T. H. Buyer, a court reporter. The Guild presented a proposed contract to Huntress, who accepted it and said it would be given due consideration. He further stated to the meeting that he was leaving the city and did

not know when he would return, therefore he could not set a date for another conference, but he would consider the contract and let them know the result later. The meeting then adjourned.

17. On March 25 respondent notified the Guild by letter that it would meet the representatives of the Guild on March 30 at the same place. The meeting was held and the proceedings were taken down by Henry L. Gazley, a court reporter. The same conferees as before were present, with the addition of M. M. Harris and Leroy Denman, attorney for respondent.

18. The proposed contract, which the Guild had presented to respondent at the meeting of March 14, contained various articles dealing with a Guild shop, preferential hiring, classifications of employees, minimum salaries, level increase in pay, hours, severance of employment, vacations, illness, limitation of apprentices, and miscellaneous provisions.

19. Huntress stated at the meeting that the contract had been considered and was found to be unreasonable and unacceptable to respondent. He further stated that the Guild shop, or closed shop, was contrary to the provisions of the National Labor Relations Act. Huntress characterized the entire contract as unreasonable, unwarranted, and unacceptable. It appears from the evidence that at that time respondent had entered into a closed-shop agreement with the Typographical Union. During this meeting, Huntress, president of respondent company, said, "As a matter of fact, we don't intend to have the Guild or any other union tell us how to run our editorial department. We have the right to run our business the way we think is best so that we can make it possible for the stockholders to receive something."

26 20. The Guild requested Huntress to submit counterproposals to the Guild as a basis for negotiation. Huntress refused to do so. The Guild also requested

him to go over each paragraph of the proposed contract with them in order that some tentative agreement could be reached as to just what kind of contract respondent would agree to. Huntress refused to do so, and stated that if the Guild desired to submit another contract to him, he would give it consideration. The representatives of the Guild finally stated that they would report the result of the meeting to the Guild members. No agreement was reached at that meeting and it adjourned.

21. On April 13, the Guild wrote to respondent and requested another conference. Respondent replied on April 16, and set April 21 as a suitable date for the meeting at the same place that the other two meetings had been held.

22. On April 13 the Guild circulated among its members a bulletin under the caption "San Antonio Guild Reporter, Vol. 1, No. 4" announcing a "Big Gridiron Dinner" to be held at the Gunter Hotel on April 28. A paragraph, captioned "Another Express-News Contract Confab Hits Wall," appeared in this bulletin which stated, inter alia, that representatives of the Guild had met with a rebuff at the second meeting with respondent on March 30 and that Mr. Huntress had termed the proposed contract, submitted at the previous meeting (March 14), as unreasonable and unacceptable and had refused to give any reasons therefor, and had also declined to outline what kind of a contract might be agreeable to him, etc.

23. On April 21 another meeting was held between respondent and representatives of the Guild at the same place that the previous meetings were held. The respondent was represented by Thornton Hall, M. M. Harris, and Leroy G. Denman, respondent's attorney. The Guild was represented by Frank G. Ragsdale and Henry B. Dielman and five Guild members as observers. The proceedings
27 of the meeting were recorded by T. H. Burger, court reporter.

24. Hall stated that Huntress was out of the city, but

they would hold the meeting. Dielman then read a lengthy statement, addressed to respondent by the Guild, and dated April 15. The statement referred to the failure to accomplish any results at the previous meetings and also respondent's rejection of the proposed contract as being unreasonable and unacceptable. It resubmitted the contract and requested respondent to go over it, item by item, with the Guild's representatives, thereby demonstrating to its employees its sincerity in the matter of collective bargaining. The statement went on to outline the position of the Guild in respect to the proposed contract and discussed the various provisions of same. In regard to the Guild shop or closed-shop provision of the contract, the Guild agreed to waive discussion on that until the other provisions had been agreed upon.

25. Hall then stated that they would accept a copy of the statement and send it to Huntress for his consideration while he was away and for further consideration upon his return to the city and he wanted this to be done before any further negotiations were had with reference to it. Harris then made an objection to the wording of the opening paragraph of the statement. He also made a long statement criticizing the Guild for issuing the aforesaid bulletin on April 13. The remainder of the meeting was taken up by various statements made by Dielman, Harris, and Denman. Nothing was accomplished at this meeting except that the Guild agreed to withdraw paragraph 20 of the aforesaid statement which was presented to this meeting by the Guild, for the reason that it had been misconstrued by respondent.

26. On May 16 the Guild asked respondent for another conference in regard to the statement delivered to respondent by the Guild at the meeting on April 21.

27. A meeting was arranged for May 23 at the same place that the other meetings were held. The re-

spondent was represented by Huntress, Harris, Grant, Walliser, Hall and Attorney Denman, also Frank G. Huntress, Jr. The Guild was represented by Ragsdale and Dielman. Burger acted as reporter and recorded the proceedings. Huntress still characterized the proposed contract as unreasonable and unacceptable and refused to submit counter proposals. Dielman stated that the proposed contract was submitted to respondent as a basis for negotiations only; however, Huntress refused to negotiate and requested the Guild to submit another contract. Nothing was accomplished at this meeting.

28. Efforts were made by the Guild to have another conference with respondent on or about August 4, but the meeting did not materialize, and further negotiations ceased, and on August 17 the Guild filed an amended charge against the respondent with the Regional Office.

29. On September 22 a formal complaint was issued against respondent by the Regional Director.

30. The San Antonio Newspaper Guild has attempted on March 14, 1938, and at various times thereafter, to bargain collectively with respondent, as exclusive representative of respondent's employees within the aforesaid appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

31. The respondent did, on March 14, 1938, and on subsequent dates, refuse to bargain collectively with San Antonio Newspaper Guild as exclusive representative of respondent's employees within the aforesaid appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IV. Interstate Commerce

32. The respondent is engaged in the business of editing, publishing, and selling two daily newspapers in San

Antonio, Texas. It is a member of the Associated Press (herein referred to as A. P.) and purchases news items, both domestic and foreign from the A. P.
29 It also purchases such news from the United press (herein referred to as U. P.). It pays the A. P. $700 and the U. P. $200 a week for such news. Respondent furnishes A. P. with Texas news items. Respondent has a contract with a newspaper correspondent in Washington, D. C., from whom it purchases his writings in reference to current events. It pays him $2600 a year for this service. Respondent also purchases from sources outside of Texas, such as McClures, Chicago Tribune, and American Institute of Public Opinion, articles written by newspaper writers; also comics and cartoons for publication in its two newspapers. Each of respondent's newspapers publishes daily quotations from the New York Stock Exchange, also grain quotations on various markets in the United States, and cotton prices on the New Orleans and Memphis markets.

33. Respondent has an arrangement with John Budd & Co., which has offices in New York, Chicago, St. Louis, San Francisco, and other places, whereby it publishes advertisements for Budd & Co.'s clients located throughout the various States who wish to advertise in Texas. Budd & Co. pays respondent for the cost of these advertisements. These advertisers are engaged in selling and distributing their products in interstate commerce. The amount received by respondent from Budd & Co. for such advertising matter is approximately 21.8 per cent of its total revenue from that source and approximately 16 per cent of its total revenue from all sources. Respondent's total gross receipts, from all sources, amount to approximately one and one-half million dollars a year.

34. The combined circulation of both newspapers of respondent is approximately 98,000 copies daily, all of which is distributed in Texas, except a very small percentage.

35. Respondent purchases its blank paper for printing its newspapers from sources outside of the State of Texas. Annual purchases of this material amount to approximately 7,000 tons of paper, valued at about $300,000. Respondent uses about $13,500 worth of printers' ink a year, and approximately 20 per cent of this amount is purchased outside of Texas. Spare parts for respondent's presses and machinery are purchased outside of Texas, to the value of about $1,850 a year. Lead, used in casting type, to the value of approximately $1,600 a year, is purchased by respondent outside of Texas.

36. Respondent is an independent publisher and is not a part of any chain of newspapers. Respondent normally employs about 350 persons at its plant.

37. The activities of the respondent, set forth in Section III above, occurring in connection with the operations of respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing finding of fact, the undersigned hereby determines and concludes that:

1. Respondent, by refusing to bargain collectively with San Antonio Newspaper Guild, and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, by refusing to bargain collectively with San Antonio Newspaper Guild, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (5) and Section 2 (6) and (7) of the National Labor Relations Act.

31 WHEREFORE, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the San Antonio Newspaper Guild, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from discouraging membership in the San Antonio Newspaper Guild, or any other labor organization, by refusing to bargain collectively with San Antonio Newspaper Guild, the representative of the employees within the aforesaid appropriate unit, as hereinabove set forth.

3. In order to affectuate the policies of the Act, respondent take the following affirmative action:

(a) Upon request, bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of the respondent's employees within the aforesaid unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its plant at San Antonio, Texas, and maintain for a period of at least thirty (30) consecutive days, notices to its employees stating that (1) respondent will cease and desist in the

manner aforesaid, and (2) respondent will, upon request, bargain with the San Antonio Newspaper Guild as exclusive representative of respondent employees within the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) File with the Regional Director for the Sixteenth Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting
32 forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that, unless on or before ten (10) days from the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring respondent to take the action aforesaid.

Request for the privilege of filing briefs with, or presenting oral argument before the National Labor Relations Board upon issues raised by any exceptions to this Intermediate Report or on other issues upon which it is desired to file a brief or present oral argument, must be made to the National Labor Relations Board, Shoreham Building, Washington, D. C., within ten (10) days from the receipt of this Report.

/s/ W. P. WEBB

Trial Examiner.

Dated: November 25, 1938.

33 File in Informal File

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH-REGION

Re EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. XVI-C-293

EXCEPTIONS OF THE EXPRESS PUBLISHING COMPANY TO THE INTERMEDIATE REPORT

National Labor Relations Board

Dec 5 1939

Docketed D

DENMAN, FRANKLIN & DENMAN

Attorneys.

34 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH-REGION

Re EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. XVI-C-293

EXCEPTIONS OF THE EXPRESS PUBLISHING COMPANY TO THE INTERMEDIATE REPORT

Now comes the Express Publishing Company and presents the following exceptions to the Intermediate Report filed herein by the Trial Examiner dated November 25, 1938, served on the Respondent November 29, 1938, said exceptions being as follows:

1. Excepts to the action of the Examiner in overruling the objections to the jurisdiction of the Board set out in Paragraphs A, B and C of Respondent's answer.

2. Excepts to the overruling by the Examiner of the Motion to dismiss, strike out or require an amendment of the Complaint as set out in Paragraph D of Respondent's answer.

3. Excepts to the overruling by the Examiner of the Motion to dismiss, strike out or require an amendment of the Complaint as set out in Paragraph E of Respondent's answer.

35 4. Excepts to the overruling by the Examiner of the Motion to dismiss, strike out or require an amendment of the Complaint as set out in Paragraph F of Respondent's answer.

5. Excepts to Paragraphs 6, 7, 9 and 11 of the Complaint and the intermediate report based thereon because the said Complaint does not charge a violation of the National Labor Relations Act, in that it charges only that Respondent "refused to agree to any request made by the Union and refused to offer any character of counter proposal" and the Wagner Act does not require the Respondent to agree to the Union's proposal or to make a counter proposal.

6. Excepts to the Complaint and the intermediate report based thereon, in that the Complaint limits and defines its charge of refusal to bargain collectively to a refusal to agree to the Union's proposal and a refusal to offer a counter proposal and the same therefore charges no violation of the law, because the Respondent under the Constitution cannot be required to make an agreement.

7. Excepts to Paragraphs 8, 9 and 11 and the intermediate report based thereon, in that the making of the statement referred to does not constitute a violation of the Wagner Act.

8. Excepts to Paragraphs 8, 9 and 11 of the Intermediate report based thereon, in that the making of such statement was a proper exercise of the freedom of speech guaranteed by the Constitution and does not violate the Wagner Act.

9. Excepts to the Examiner's refusal to sustain the Respondent's Motion to strike out or amend by the averment of particulars the language contained in Paragraph 9 of the Complaint charging the Respondent with
36 interfering with, restraining and coercing its employees by various and sundry other means well known to Respondent, in that it was not due process of law

to require the Respondent to go to trial upon such allegation without apprising Respondent in the complaint of the nature of the charge against Respondent and the said Complaint and the trial based thereon and the Examiner's Report based thereon do not comply with the fundamental requirements of a fair trial.

10. Excepts to the finding in Paragraph 7 of the intermediate report that Respondent caused Hall's statement to be read to its employees for the purpose of coercing and discouraging the activities of the Guild, in that there is no evidence to support said finding.

11. Excepts to the finding in Paragraph 7 of the intermediate report that Respondent caused Hall's statement to be read to its employees for the purpose of coerting and discouraging the activities of the Guild in that there is insufficient evidence to support such finding.

12. Excepts to the finding of Paragraph 8 of the intermediate report to the effect that by the activities therein referred to Respondent has interfered with, restrained and coerced its employees in that there is insufficient evidence to support said finding.

13. Excepts to the finding of Paragraph 8 of the intermediate report to the effect that by the activities therein referred to Respondent has interfered with, restrained and coerced its employees in that there is insufficient evidence to support said finding.

14. Excepts to the finding of Paragraph 9 of the intermediate report to the effect that by said activi-
37 ties the Respondent has discouraged membership in the San Antonio Newspaper Guild, in that there is no evidence to support said findings.

15. Excepts to the finding of Paragraph 9 of the intermediate report to the effect that by said activities the Re-

spondent has discouraged membership in the San Antonio Newspaper Guild, in that there is insufficient evidence to support said finding.

16. Excepts to the findings in the intermediate report to the effect that the statement read by Hall constituted a violation of the Wagner Act, because there was no evidence that the statement had any effect on any of the employees to coerce, interfere with, restrain or affect them in any manner.

17. Excepts to the finding in Paragraph 20 to the effect that Huntress refused to submit a counter proposition to the Guild as a basis for negotiating, because there is no evidence to support such finding.

18. Excepts to the finding of Paragraph 20 of the report that Huntress refused to go over each paragraph of the proposal with the Guild's representatives, in that the finding is not supported by the evidence.

19. Excepts to the finding in Paragraph 27 of the report that Huntress refused to submit a counter propcsal, in that it is not supported by the evidence.

20. Excepts to the finding in Paragraph 27 of the report that Huntress refused to negotiate, in that it is not supported by the evidence, it being shown by the evidence that he did negotiate but that the parties did not arrive at an agreeemnt.

38 21. Excepts to the finding in Paragraph 28 to the effect that efforts were made by the Guild to have another conference with Respondent on or about August 4th, because it is shown by the stipulation of the parties introduced in evidence that the meeting of August 4th was not called in accordance with efforts of the Guild or of Respondent but by LeBarron, a representative of the Labor Board and that the meeting was called off by him

and that neither the Guild nor Respondent called the meeting and that Respondent was willing to meet if the Guild wanted to meet.

22. Excepts to the finding in Paragraph 31 to the effect that Respondent refused to bargain collectively with the Guild, because the evidence shows that Respondent did not refuse to do so but in fact did bargain collectively with the Guild as the representative of said employees.

23. Excepts to the finding contained in Paragraph 37 to the effect that the activities of Respondent referred to therein have a close, intimate and substantial relation to Inter-state Commerce and tend to burden and obstruct Inter-state Commerce and the free flow thereof, in that it is shown by the evidence that the same do not have any substantial connection with and do not obstruct inter-state Commerce or the free flow thereof, and said finding is not supported by the evidence.

24. Excepts to the conclusions and recommendations in said report on each of the grounds hereinabove set out in the foregoing exceptions.

39 25. Excepts to the findings in said report of violation of the Wagner Act on the ground that such findings are not limited to the matters complained of in the Complaint, in that the Complaint charged merely that by Hall's statement Respondent had the effect of discouraging membership and that Respondent had refused to agree to any request made by the Union and refused to offer a counter proposal, whereas the report undertakes to find that Respondent refused to bargain collectively, and also that Respondent did in fact coerce, interfere with and restrain its employees from the exercise of the rights guaranteed to them by the Act and discouraged membership in the Guild so that the report undertakes to find the Respondent guilty of violations of the Act not charged by the Complaint.

26. Excepts to the said findings and recommendations on the ground that they recommend among other things injunction against Respondent in reference to "any other labor organization" when there was no complaint involving any other labor organization and it would not be due process to thus adjudicate in reference to some other labor organization without specifying it or some proof that it is lawfully organized and entitled to the relief thus granted.

27. Further excepts to the affirmative action recommended to the effect that Respondent be ordered to bargain collectively upon request when the evidence shows that it has been bargaining collectively with the Guild and that it has outstanding tenders and offers to continue to bargain collectively and that negotiations were broken off by the Guild and not by the Respondent.

28. Further excepts to the recommendation in reference to requiring Respondent to post notices that it will cease and desist from interfering with, restraining or coercing its employees, etc., in that Respondent denies that it has ever done so, and therefore said requirement which in effect requires Respondent to sign an admission that it has been guilty of such practices and will now cease them, would be a violation and infringement upon the liberty of speech guaranteed by the amendment to the Constitution of the United States since liberty of speech includes freedom to be silent as well as to speak, and also violates the provisions guaranteeing due process of law, the Amendments referred to herein being among others the First and Fourteenth Amendments to said Constitution, and the said requirement exceeds the power vested in the Labor Board which did not include the power to extort or require "confessions", especially where the party is denying the truth thereof.

29. Excepts to the conclusions and recommendations, in that it appears from the entire proceedings, both the com-

plaint and the evidence, that the Respondent bargained collectively with the Guild as the representative of its employees in the Unit in full accord with the Act and that the Complaint was merely that the Respondent did not reach an agreement with the Guild and therefore there was no violation of the Act since the Act requires only to bargain and not that the parties reach an agreement.

41 Respectfully submitted,

EXPRESS PUBLISHING COMPANY

DENMAN FRANKLIN DENMAN

By LEROY G. DENMAN

Its Attorney,

215 W. Commerce Street

San Antonio

Texas.

42 COPY

DENMAN, FRANKLIN & DENMAN

LAWYERS

OFFICES IN SAN ANTONIO LOAN AND

TRUST BUILDING

SAN ANTONIO, TEXAS

November 30, 1938

Re: Express Publishing Company

and

San Antonio Newspaper Guild. Case No. XVIC-293

National Labor Relations Board,

Washington,

D. C.

Gentlemen:

Receipt is acknowledged of the copy of the Intermediate Report filed by the Trial Examiner. Enclosed are the Exceptions of the Express Publishing Company (4 copies).

In accordance with your letter, we hereby request that we be permitted to submit oral argument before the Board.

Yours truly

s/ DENMAN FRANKLIN DENMAN

for Express Publishing Co.

LGD-k.

encs.

43 NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C. NLRB 122a

National Labor Relations Board

Mar 10, 1939

Docketed M

In the Matter of EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. C-1071

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, March 21, 1939 at 2:00 p. m. or as soon thereafter as the Board may hear you, in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., March 10, 1939.

NATHAN WITT

(Seal) Secretary

44 Z-218

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of EXPRESS PUBLISHING COMPANY and SAN ANTONIO NEWSPAPER GUILD	Case No. C-1071

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of ORAL ARGUMENT at the above place on March 21, 1939 at 2:00 p. m.

BEFORE:

J. Warren Madden, Chairman
Edwin S. Smith, Member
Donald Wakefield Smith, Member

APPEARANCES:

Edwin Swope, of Counsel to the Board
For the Company:
L. G. Denman,
San Antonio, Texas
For the Union:

45 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of Express Publishing Company and San Antonio Newspaper Guild

Case No. C-1071.—Decided July 28, 1939

Newspaper Industry—Interference, Restraint, or Coercion: misrepresenting terms and purposes of the Act to employees—Unit Appropriate for Collective Bargaining: city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers employed by respondent in the editorial departments of both its newspapers; stipulation as to—Representatives; stipulations as to—Collective Bargaining: meaning of; negotiations in good faith; meeting with representatives but with no bona fide intent to reach an agreement; counter-proposals, failure or refusal to make.

Mr. L. N. D. Wells, Jr., for the Board.

Mr. Leroy G. Denman, of San Antonio, Tex., for the respondent.

Mr. Frank G. Ragsdale, of San Antonio, Tex., for the Guild.

Mr. Edwin L. Swope, of counsel to the Board.

DECISION

and

ORDER

Statement of the Case

Upon charges and amended charges duly filed by San Antonio Newspaper Guild, herein called the Guild, the Na-

tional Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated September 22, 1938, against Express Publishing Company, San Antonio, Texas, herein called the respondent, alleging that the respondent, had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent and the Guild.

The complaint alleged in substance that the respondent had made certain statements to its employees for the purpose of discouraging membership in the Guild and had refused to bargain collectively with the Guild as the exclusive representative of its employees in an appropriate unit although the Guild had been designated by a ma-
46 jority of such employees as their representative for the purpose of collective bargaining. On October 3, 1938, the respondent filed its answer, denying that it had engaged in the unfair labor practices alleged in the complaint and denying that its business affects commerce within the meaning of the Act.

Pursuant to notice, a hearing was held at San Antonio, Texas, on October 6, 1938, before William P. Webb, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and the Guild by its president and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Trial Examiner reserved decision on certain other rulings for his Intermediate Report.

On October 18, 1938, the respondent filed a brief with the Trial Examiner in support of its case. On November 25, 1938, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom and take certain specified affirmative action. The Trial Examiner also made rulings on motions upon which he had reserved decision during the hearing. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 5, 1938, the respondent filed Exceptions to the Intermediate Report. On March 21, 1939, pursuant to notice, a hearing for the purposes of oral argument on the Exceptions and on the record was held before the Board in Washington, D. C. The respondent was represented by counsel and participated in the argument. The Guild did not appear. The Board has considered the respondent's Exceptions and finds no merit in them.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent is a Texas corporation engaged in the publication of the San Antonio Express and the San Antonio News, daily morning and evening newspapers respectively, in the City of San Antonio, Texas. The average combined daily circulation of these newspapers is in excess of 90,000, practically all of which is confined to the State of Texas. The respondent's newspapers carry news of local, national, and foreign affairs, local and national advertising, special

47

features, cartoons, and comic strips. Out-of-state news is supplied by the United Press, to which the respondent is a subscriber, and by the Associated Press, of which the respondent is a member. The news dispatches are delivered by these organizations to the respondent's place of business by means of their facilities and employees located in the respondent's building. Local news of importance which is gathered by the respondent's reporters is sent out daily by the local representative of the Associated Press. The respondent also has an arrangement with a newspaper correspondent in Washington, D. C., who transmits to the respondent news items from Washington. The National advertising carried by the respondent's newspapers and procured for it by an agent having offices in New York, Chicago, St. Louis, Dallas, San Francisco, and Los Angeles accounts for approximately 16 per cent of the respondent's total income, or about $225,000.

Approximately 35 per cent of the respondent's total expenses are incurred in the purchase of goods and services originating outside the State of Texas. The cost of special features and the Associated Press and United Press services in 1937 amounted to about $80,633. The respondent purchases all of its newsprint and lead outside the State at a yearly cost of $295,600. It also annually purchases outside of the State about $2,900 worth of ink and $1,850 worth of parts used in maintaining and repairing its machinery. These raw materials are shipped to the respondent from points outside the State of Texas.

II. The Organization Involved

San Antonio Newspaper Guild is a labor organization affiliated with the American Newspaper Guild, which is in turn affiliated with the Committee for Industrial Organization. The Guild admits to its membership editorial, advertising, carrier, office, and circulation department employees of the newspapers located in San Antonio, Texas.

III. The Unfair Labor Practices

A. The refusal to bargain collectively

1. The appropriate unit

It was stipulated by the parties that "all the employees of respondent engaged in the editorial department, both of the NEWS and EXPRESS, namely, city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act."

We find that the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers employed by the respondent in the editorial departments of the San Antonio News and the San Antonio Express constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Guild of a majority in the appropriate unit

It was further stipulated by the parties that at all times referred to in the complaint the Guild was the representative of a majority of the employees of the respondent in the appropriate unit for collective bargaining purposes.

We find that on February 15, 1938, the Guild had been designated and selected by a majority of the employees in the appropriate unit as their representative for the pur-

poses of collective bargaining, and that pursuant to Section 9 (a) of the Act, was on that date and at all times thereafter the exclusive representative of all the employees in such unit for the purposes of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain; interference, restraint, and coercion

On March 14, 1938, after the Guild had twice requested the respondent to enter into negotiations with it, the first conference between the representatives of the Guild and the respondent was held. At this conference the Guild was represented by Frank G. Ragsdale, president of the Guild, Sidney Berkowitz, an employee of a San Antonio department store, and Henry Dielmann, attorney. The respondent was represented by Frank G. Huntress, president of the respondent, Thornton Hall, secretary of the respondent, and A. W. Walliser and A. W. Grant, also officials of the respondent.

Dielmann opened the conference by stating that the Guild had given its representatives a proposed contract which it desired to be used as a basis of negotiation between its representatives and those of the respondent.[1] Huntress then read a prepared statement to the effect that the respondent had always maintained a just and impartial relationship with its editorial department employees regardless of union affiliation, and that it intended to continue this policy. He also described generally certain benefits which he claimed the respondent had given its employees since 1902. At the conclusion of his statement Huntress announced "While we see no reason to change our just and impartial policy in the news and editorial departments of our newspapers which has been maintained up to the pres-

49

1 The minutes of this conference as well as those that followed were transcribed and appear in evidence as Board Exhibit 3 E, H, O, and U.

ent time, every consideration will be given to the Guild members and any other employee in those departments of our newspapers."

The Guild representatives then presented the written draft of the proposed contract which contained various provisions for (1) the establishment of a "Guild Shop";[2] (2) preferential hiring of Guild candidates to fill vacancies; (3) the classifications of employees; (4) minimum salaries; (5) at least a 10-per cent increase in pay to all employees; (6) an 8-hour day and a 40-hour week with time and one-half pay for overtime; (7) written notice to discharged employees stating cause therefor and a cash severance payment equal to 4 weeks' pay; (8) vacations with pay; (9) sick leave with pay; and (10) limitations on the employment of apprentices. The proposed contract also provided inter alia that (1) employees be reimbursed for expenses incurred in line of duty; (2) the respondent would not enter into any agreement with any other publisher not to offer to give employment to any employees of the publisher; (3) neither reporters should be required to act as photographers nor photographers as reporters; (4) bulletin board space would be made available for Guild notices; and (5) no employee would be required to publish under his name any material containing an expression of opinion not in conformity with his opinion.

Ragsdale then set forth the general aim of the Guild and stated that the Guild representatives "would like to sit down around a table and discuss these things [provisions of the contract] and see why they are necessary and why we want them, and why we think we ought to have them. That is one of the reasons why I would like to see us sit

2 The provisions in the proposed contract for a "Guild Shop" read as follows:

1. The Publisher shall require as a condition of employment of any employee that he be and remain a member of the Guild in good standing during the term of his employment. If any employee be not a member of the Guild at the time of signing of this agreement or at the time of his acceptance of employment, he shall become a member of the Guild within thirty days of the date of signature of this agreement or within thirty days of his becoming an employee of the Publisher.

8. The Guild agrees that it will admit to membership and retain in membership any employee, subject to the Constitution of the American Newspaper Guild and bylaws of the Guild.

down and take this thing [contract] up clause by clause and see what it means to us, as well as what it means to you."

50 Huntress agreed to consider the proposed contract and to notify the Guild as soon as possible, and the meeting adjourned.

On March 30, 1938, a second conference was held. Huntress opened the meeting by reading the following prepared statement:

> We have thoroughly considered the provisions of the contract submitted to us by the negotiators in behalf of San Antonio Newspaper Guild on March 14, 1938. We find the terms of this proposed contract unreasonable and unacceptable.
>
> The proposed requirement that the publisher set up and maintain a "Guild Shop" with employment conditioned upon the applicant's Guild membership is contrary to the letter and intent of the National Labor Relations Act. That statute provides that an employee is not required to join a labor union, or to pay dues or assessments, to any organization, unless he chooses to do so of his own free will. Existing independent employment relations may be continued by the individual employee, or by employees as a group.
>
> The proposed contract calls for unreasonable restrictions upon the publisher's right of both employment and discharge in the conduct of the news department. It also would undertake to tie the publisher's hands as regards salary scales in relation to the condition and conduct of business. Furthermore, in several instances it would require pay for employees, without working.
>
> The proposed requirement of written notice stating cause of an employee's dismissal from the publisher's

employ is contrary to rights accorded by the Texas Constitution, as decided by the Supreme Court of this State. The proposed provisions as to sick leave and pay therewith are unreasonable on several grounds, and particularly in consideration of the fact that Texas law requires an employer to carry employee-compensation insurance, and that Federal law requires the employer to pay social security tax, so that he cannot afford to bear this obligation personally.

The proposed restrictions upon the nature and character of services to be rendered by photographers and reporters are unreasonable and unwarranted.

The proposed restriction upon the source and authorship of news and feature matter for these newspapers is utterly unreasonable and impracticable upon its face. Certainly no publisher should consent to any such censorship from any source.

The classifications proposed to employees in the application of the contract are unreasonable, unwarranted and unacceptable to the Company.

51 A discussion of the "Guild Shop" provision ensued during which Ragsdale, referring to the fact that prior to this time the respondent had entered into a closed-shop agreement with the representatives of certain of its employees not in the editorial department, asked Huntress why he desired to follow one procedure with regard to those employees and another with regard to its editorial department employees. Huntress replied; "As a matter of fact, we don't intend to have the Guild or any other union tell us how to run our Editorial Department. We have the right to run our business the way we think is best so that we can make it possible for the stockholders to receive something." After some argument Dielmann sought to discuss further the "Guild Shop" provisions, to which Huntress replied, "I think, as I said before, I have made it plain that the contract submitted was unreason-

able, unwarranted and unacceptable to us." He stated that the Guild could submit another contract if it so desired. Ragsdale then stated, "Mr. Huntress, we have only taken up this first clause and apparently are not getting anywhere on that. The Guild has submitted a proposition which it feels is a fair contract. As I stated at the last conference, the Guild is not trying to put anybody on the spot, but is perfectly willing to listen to reason." Ragsdale then asked, "Would you be willing to submit a counter proposition?" to which Huntress replied, "I think it is up to you all to submit a contract if you so desire." Dielmann then suggested that they discuss the various provisions of the proposed contract in order that a tentative agreement could be reached. He added that the manner in which the respondent's objections to the proposed contract were worded was such that the Guild representatives had no way "of finding out what paragraphs are acceptable or what changes would make them acceptable," and that they were therefore at a loss to know what type of a contract would be acceptable to the respondent. Huntress replied that he did not have anything further to say. During the ensuing discussion the Guild representatives repeatedly urged the respondent's representatives to go over each clause in the proposed contract with them in order that a tentative agreement could be drawn up but Huntress refused to change his position. The respondent's representatives reverted to the objections stated in the proposed statement read by Huntress at the beginning of the meeting and the conference terminated soon thereafter.

On April 4, 1938, the respondent's secretary with the permission of its president, assembled the editorial department employees and read the following statement:

> We have called you to this meeting for the purpose of offering you further explanation and interpretation than perhaps you have received to date of a
> 52 matter which vitally concerns each of you as well as ourselves. We have reference to the National Labor Relations Act, known as the Wagner

Act. The first thought we wish to leave with you is this: Under the provisions of the Wagner Act an employee is not required to join a labor union, or to pay dues or assessments to any organization unless he chooses to do so of his own free will. Existing independent employment relations may be continued by the individual employee, or by employees as a group. In other words, while the Act provides employees with the right to self-organization, to form, join or assist labor organization and further provides employees with the right to bargain collectively through representation of their own choosing, the Act does not require nor force an employee to join any labor organization. The employee has the right to join or refuse to join any organization and is to be guided only by the dictates of his own free will. Whether the employee joins or refuses to join any organization will have no effect whatever on his employment.

No one can compel you to join any organization and no one can prevent you from joining any organization.

The second thought we wish to leave with you is this: An employer may hire or discharge or transfer employees to any task he may see fit, discharge an employee in the interest of efficiency or even from personal animosity or sheer caprice, but employees cannot be discharged or hired for the purpose of influencing their right under this Act.

In other words, membership in any organization does not guarantee an employee that he cannot be discharged. He can be discharged just as readily if he has organization membership as he can if he does not have the membership. The only protection an employee has ever had or ever will have against discharge is to perform his work in a satisfactory manner and to conduct himself in accordance with the general rules and requirements of his employer.

The third thought we would like to leave with you is this: It has always been and always will be a policy of this company to provide as agreeable and comfortable working conditions as possible for our employees. Each of you has been in our employ a number of years and each of you know that we have always endeavored to make your association with us as pleasant as possible and that we have always been interested in your welfare. As an illustration, each of you know we carried you through the depression rather than throw you out of employment, although our business did not justify us in doing so. Further, you know that we have carried some of you through sickness. Further, each of you know that it is our policy to
53 give each one a vacation with full pay. All this is done because of our interest in your welfare and to promote pleasant relationship between you and our company. Each of you know we were not forced to do this by any labor organization and no labor organization can force us to do these things.

Summing up, an employee cannot be forced to join a labor organization but it is a matter of exercising his own free will; membership in a labor organization does not guarantee an employee' employment; and, membership in a labor organization does not guarantee an employee the interest in his welfare by his employer.

We intend to give every consideration to Guild members and we want it understood that non-Guild members will also receive every consideration.

We hope we have given you some beneficial information and we appreciate your coming here for this meeting.

On April 21, 1938, the third conference was held with Huntress absent. Ragsdale opened the conference by read-

ing a lengthy letter addressed to the respondent by the Guild in which the Guild stated that the respondent had rejected the proposed contract as unreasonable and unacceptable even as a basis of negotiations, and requested the respondent "to go over the previously proposed contract with our negotiators, item by item, thereby demonstrating to his employes his sincerity in collective bargaining." The letter also set forth the general policy and aims of the Guild and a lengthy reply to the respondent's objections to the proposed contract. The Guild offered to set aside the "Guild Shop" provision in the contract, which the respondent objected to, until the other provisions were discussed and pleaded "that negotiations be continued in a friendly spirit until the contract is thoroughly discussed, with the end in view that a contract mutually acceptable to the publisher and to the Guild will ultimately result." Hall accepted the letter, promised to give it to Huntress for his consideration and after some discussion during which Denman reiterated the objections stated in the prepared statement read by Huntress at the beginning of the March 30 conference and quoted in full above, the meeting adjourned.

On May 23, 1938, the fourth conference was held at the request of the Guild. The meeting was opened by Hall who read a statement prepared by Huntress which reiterated the respondent's former position that the contract was "unreasonable and unacceptable." The respondent's attitude appeared in the following conversations engaged in by Dielmann, Denman, and Huntress during this conference:

> Mr. Dielmann. The original contract as proposed has been rejected as being unsatisfactory and un-
> 54 acceptable. The Guild comes back and discusses the various objections in this communication, inviting an open discussion on those disputed questions regarding the original contract. What I want to know is, the negotiators here either can or either cannot discuss the objections made by the Publisher and the reply made by the Guild, one or the

other. In other words, are we at the end of what we can do? What is the next step for us as negotiators?

Mr. Denman. You are free to discuss anything you wish, or say anything you want to say. Discussion means something said by somebody. Now, Mr. Huntress has said item by item what his objections were to the contract, and anything you want to say I am sure Mr. Huntress will be glad to hear.

Mr. Huntress. You cannot reasonably expect us to continue this resultless discussion when you insist upon keeping that contract before us which has already been rejected as unreasonable and unacceptable. You have not given us anything to go by. All you say here is that you want us to discuss it. In other words, conversation based upon such an attitude can get us nowhere.

Mr. Dielmann. Well, all we can do is to take some proposal as the basis of discussion, even though it may on its face be unacceptable to you, yet it may be the basis of a discussion. In other words, you say here that a certain wage is an unreasonable wage and you do not accept that. Now, the only way we can find out what a reasonable wage is, according to your interpretation, is to discuss that wage or that particular classification. Now, I am merely inquiring as a negotiator whether we can do that, or is it your idea that we must submit to you an entirely new contract for your approval or disapproval.

Mr. Huntress. That is a matter entirely with the Guild. If you will look through the conversations that we have had so far you will find that you have at no time made it plain to us, other than submitting and resubmitting a proposed contract that we rejected.

Mr. Dielmann. Merely as a basis of discussion.

Mr. Huntress. I think we have made our objections to that contract very clear to you in writing.

Mr. Dielmann. Well, the Guild has answered your objections and there is, of course, a difference of opinion between the two of you. Our only purpose here is to see whether or not we can act as mediators between the Guild and you as the Publisher, in trying to arrive at what would be the basis of a fair contract to both.

55 The Guild representatives then urged the respondent's representatives "to sit around a table and take that contract which you have rejected and discuss it, and see if we can arrive at what ought to be eliminated and what might be acceptable, what rates might be considered reasonable by you." The respondent's representatives, however, refused to respond to this proposal. Finally, a Guild representative stated in effect that apparently further attempts to negotiate would be futile because of Huntress' attitude and the meeting ended.

A conference scheduled for August 4 failed to materialize because of a misunderstanding as to who had requested the meeting.

B. Conclusions

From the foregoing facts and upon the entire record, it is apparent that on March 14, 1938, and at all times thereafter, the respondent had no intention of negotiating in good faith with the Guild nor of entering into a collective bargaining agreement with it.

"Collective bargaining, as contemplated by the Act, is a procedure looking toward the making of a collective agreement by the employer with the accredited representatives of its employees touching wages, hours of service, and other working conditions of the employees. The duty to bargain collectively, which the Act imposes upon employers, has as its objective the establishment of such a contractual relationship. We have held that this duty is

not limited to recognition of the employees' representatives qua representatives, or to a meeting and discussion of terms with them. The duty encompasses an obligation to enter into discussion and negotiation with an open and fair mind and with a sincere purpose to find a basis of agreement concerning the issues presented, to make contractually binding the understanding upon terms that are reached, and, under ordinary circumstances, to reduce that obligation to the form of a signed written agreement if requested to do so by the employees' representative."[3] Although the respondent was willing to meet with the Guild representatives and to receive the Guild's proposals, its objections to the proposed contract with the Guild submitted as a basis of negotiations amounted to nothing more than a flat rejection of the entire proposal and, like the statements of its representatives at all the conferences, were worded in such a manner that the respondent carefully avoided any affirmative indication of possible terms upon which it would be willing to agree. The Guild's representatives repeatedly requested and urged the respondent's representatives tc discuss each of the provisions in the proposed contract with them so that an understanding could be reached on each provision and a tentative agreement acceptable to both parties drawn up. However, Huntress, who was the spokesman for the respondent, would at no time change his position that the entire contract was "unreasonable and unacceptable"; that he was unwilling to submit a counter proposition; and that it was incumbent upon the Guild to submit another proposal, for his "due consideration," if the Guild cared to do so. Clearly an employer is not required under the Act to agree to whatever proposals a labor organization submits to him. It is obvious, however, that the technique employed by the respondent in this case was calculated to and did make any productive negotiations impossible.

56

The respondent's action in assembling its editorial department employees on April 4 and reading the statement

3 Matter of Highland Park Manufacturing Co. and Textile Workers Organizing Committee, 12 N. L. R. B., No. 120; see also Matter of S. L. Allen & Company, Inc., a Corporation, and Federal Labor Union Local No. 18526, 1 N. L. R. B. 714.

set forth above amounted to a direct interference with the Guild's efforts to negotiate and constituted an invasion of the employees' rights under the Act. The statement which purported to inform the employees of their rights under the Act emphasized the fact that the employees were not required to avail themselves of such rights, that the existing labor policy was satisfactory to the respondent, that the benefits accorded to the employees flowed solely from the respondent's interest in their welfare, and that collective bargaining was in effect unnecessary. It is apparent that the statement which in no part described the purposes and policies of the Act presented a distorted concept of employees' rights thereunder.[4]

Counsel for the respondent contended at the oral argument that Huntress, by making clear during the conferences that he desired the then existing working conditions in the editorial department to continue, in effect had submitted a counter proposal. We find this contention to be without merit. Huntress did not at any time during the conferences affirmatively offer or indicate that he was willing to enter into an agreement of any kind with the Guild.

An employer's tactics in evading his obligation to bargain collectively under the Act similarly appeared in Matter of Globe Cotton Mills and Textile Workers Organizing Committee[5] in which we said:

> The respondent's tactics in readily participating in discussions in which its agents carefully avoided any semblance of agreement to proposed terms and offered no suggestions for changes
> 57 acceptable to them convince us that the respondent only sought to give the appearance of obedience to the Act without entering into genuine collective bargaining.

4 Cf. Matter of Mansfield Mills, Inc. and Textile Workers Organizing Committee, 3 N. L. R. B. 901; Matter of Mock-Judson Voehringer Company of North Carolina, Incorporated and American Federation of Hosiery Workers, North Carolina District, 8 N. L. R. B. 133; Matter of Titmus Optical Company and Optical Workers Union, Local No. 20682, 9 N. L. R. B. 1026.

5 6 N. L. R. B. 461.

In sustaining the Board's decision ordering the employer therein to bargain collectively with the representative of its employees, the Circuit Court of Appeals for the Fifth Circuit said:[6]

> We believe there is a duty on both sides, though difficult of legal enforcement, to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor, and if found to embody it in a contract as specific as possible, which shall stand as a mutual guaranty of conduct, and as a guide for adjustment of grievances. . . . the duty is on the Mills [employer] to join in formulating one [a contract] to which both [the Union and the Employer] can agree, fixing as definitely as possible, and for such time as may be agreed on, wages, hours, and conditions of employment, whether on the present basis or a new one. . . . when a counter-proposal is directly asked for, [by the Union] it ought to be made [by the employer] for the resistance in discussion may have been only strategy and not a fixed final intention.

We find that the respondent at all times since March 14, 1938, has refused to bargain collectively with the Guild as the exclusive representative of its employees in an appropriate unit and that it has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the respondent by reading the above-described statement to its employees on April 4, 1938, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the

6 Globe Cotton Mills v. National Labor Relations Board, 103 F. (2d) 91.

operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the respondent refused to bargain collectively with the Guild, we shall order it, upon request, to bargain collectively with the Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers employed by the respondent in the editorial departments of the San Antonio News and the San Antonio Express, and if understandings are reached, to embody such understandings in a signed agreement, if requested to do so by the Guild.

58

We shall further order the respondent to cease and desist from its unfair labor practices.

Upon the basis of the foregoing findings of fact, the Board makes the following:

Conclusions of Law

1. San Antonio Newspaper Guild is a labor organization within the meaning of Section 2 (5) of the Act.

2. The city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, employed by the respondent in the editorial departments of the San Antonio News and the San Antonio Express constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. San Antonio Newspaper Guild was on February 15,

1938, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. By refusing and continuing to refuse to bargain collectively with San Antonio Newspaper Guild as the exclusive representative of the employees in the above stated unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Express Publishing Company, San Antonio, Texas, and its officers, agents, successors, and assigns, shall:

59 1. Cease and desist from:

(a) Refusing to bargaining collectively wit i San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News, with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in a signed agreement, if requested to do so by the Guild;

(b) Post immediately notices to its employees in conspicuous places within the plant, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting; stating (1) that respondent will cease and desist as aforesaid, and (2) that the respondent will bargain collectively with San Antonio Newspaper Guild as the representative of its city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, in the editorial departments of the San Antonio News and San Antonio Express, with respect to rates of pay, hours of employment, and other conditions of employment, and that if an understanding is reached on any such matters the respondent will embody said understanding in a signed agreement, if requested to do so by the Guild;

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Mr. William M. Leiserson took no part in the consideration of the above Decision and Order.

60 NLRB-49

File in Informal File

In the Matter of

EXPRESS PUBLISHING COMPANY

and

SAN ANTONIO NEWSPAPER GUILD

Case No. C-1071

National Labor Relations Board

Jul 28 1939

Docketed S

AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA, ss:

I, C. Matthew Pientka being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 28th day of July 1939, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

San Antonio Newspaper Guild

Att: Frank G. Ragsdale, President

No. 11 Circle St.

San Antonio, Texas

Leroy G. Denman, Esq.

215 W. Commerce St.

San Antonio, Texas

s/ C. MATTHEW PIENTKA

Subscribed and sworn to
before me this 28th day
of July 1939.

(Seal) s/ JOHN A. NEVROS

Notary Public, D. C.

My Commission Expires Aug. 15, 1943.

San Antonio, Texas

Jul 31 1939

10:30 P M

Post Office Department

Official Business

Registered Article

No. 69567

Return to NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C 1071

San Antonio Newspaper Guild

(Signature or name of addressee)

Mrs. Frank G. Ragsdale

(Signature of addressee's agent)

Date of delivery Jul 31, 1939

San Antonio, Texas

Jul 31 1939

10:30 P M

Post Office Department

Official Business

Registered Article

No. 69568

Return to NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C 1071

Express Publications Co.

Leroy G. Denman

(Signature or name of addressee)

Roland Valdez

(Signature of addressee's agent)

Date of delivery Jul 31, 1939

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9408

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY, RESPONDENT

Answer of Respondent

Filed February 16th, 1940

Answer of the Respondent to the Petition for Enforcement of an Order of the National Labor Relations Board

To the Honorable Judge of said Court:

The Express Publishing Company, answering the petition of the National Labor Relations Board filed herein, says:

(1) Answering paragraph one, admits that Respondent is a Texas corporation engaged in business in the State of Texas within this judicial circuit; denies that any unfair labor practices occurred; upon information and belief denies that the Court has jurisdiction, because the matters involved are not in reference to interstate commerce as more fully hereinafter alleged.

(2) Answering paragraph two, admits that the Board entered the order described in paragraph two; denies that it was justified by or based upon the evidence offered.

(3) Answering paragraph three, admits the service therein alleged.

(4) Answering paragraph four, admits the filing of the transcript.

(5) The Respondent denies that the Board is entitled to an order of this Court enforcing the order entered by the Board, and for grounds thereof says that the Board's order was based upon the following errors:

1. That the Board erred in failing to sustain the first exception of the Respondent in reference to the jurisdiction of the Board set out in paragraphs "A," "B," and "C" of the Respondent's answer, which paragraphs "A," "B," and "C" are as follows:

"A. The Board has no jurisdiction hereof, because the matter does not involve interstate commerce or anything within the Federal jurisdiction.

"B. The Board does not have jurisdiction, because the respondent's business, being a local business within the State of Texas, is not subject to jurisdiction of said Board.

"C. The Board does not have jurisdiction, because if any portion of respondent's business consists of interstate commerce, its relationship to the matters involved herein is so indirect and inconsequential that the matter involved herein is not within the jurisdiction."

2. That the Board erred in failing to sustain the second exception of the Respondent in reference to striking out or requiring an amendment of the complaint as set out in paragraph "D" of Respondent's answer, which paragraph "D" reads as follows:

"D. The complaint, in paragraph 6, is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that the San Antonio Newspaper Guild, acting by and through its duly authorized representatives, Frank Ragsdale and Henry B. Dielman and others, requested respondent to bargain collectively, and fails to state the names of the individuals referred to by the term 'and others,' so that the respondent is unable to properly answer or prepare for trial thereon, and the said complaint should be dismissed or the said phrase 'and others' stricken out, or an amendment of the complaint be required to specify such names."

3. That the Board erred in failing to sustain the third exception of the Respondent in reference to striking out or requiring an amendment of the complaint as set out in paragraph "E" of Respondent's answer, which paragraph "E" reads as follows:

"E. The complaint in paragraph 9 is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that by an alleged refusal to bargain collectively as set forth in the allegations of paragraph 6 and by the allegations in paragraph 8, 'and by various and sundry other means well known to respondent' that respondent interfered with, restrained, coerced, etc. employees, and fails to specify or designate the various and sundry other means referred to, and therefore fails to comply with said rule requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved, and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent, so that respondent can not properly plead or prepare for trial thereon, and respondent says that said complaint should be dismissed, or the said words 'and by various and sundry other means well known to respondent' should be stricken out, or that an amendment should be required to the said complaint requiring compliance as aforesaid with the said rule."

4. That the Board erred in failing to sustain the fourth exception of the Respondent in reference to striking out or requiring an amendment of the complaint as set out in paragraph "F" of Respondent's answer, which paragraph "F" reads as follows:

"F. The amended charge, a copy of which is attached to the complaint, after specifying certain alleged actions on the part of the respondent, states that by the acts set forth in said paragraph 'and by other acts and conduct by its officers, agents and employees' inter-

fered with, restrained and coerced its employees, and fails to specify or designate the other acts and conduct referred to, and therefore fails to comply with said rule requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved, and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent, so that respondent can not properly plead or prepare for trial thereon, and respondent says that said complaint should be dismissed, or the said words 'and by other acts and conduct it by its officers, agents, and employees,' should be stricken out, or that an amendment should be required to the said complaint requiring compliance as aforesaid with the said rule."

5. That the Board erred in failing to sustain the fifth exception of the Respondent which was to paragraphs six, seven, nine, and eleven of the complaint, and the intermediate report based thereon, because the complaint does not charge a violation of the National Labor Relations Act, in that it charges only that Respondent "refused to agree to any request made by the Union and refused to offer any character of counter proposal," in that the Wagner Act does not require the Respondent to agree to the Union's proposal or to make a counter proposal.

6. That the Board erred in failing to sustain the sixth exception of the Respondent that the complaint limits and defines its charge of refusal to bargain collectively to a refusal to agree to the Union's proposal and a refusal to offer a counter proposal, and the same therefore charges no violation of the law, because the Respondent under the Constitution of the United States cannot be required to make an agreement.

7. That the Board erred in failing to sustain the seventh exception of the Respondent which was to paragraphs eight, nine, and eleven of the complaint, in that the making of the statement referred to therein does not constitute a violation of the Wagner Act.

8. That the Board erred in failing to sustain the eighth exception of the Respondent to paragraphs eight, nine, and eleven of the complaint that the making of the statement referred to therein was a proper exercise of the freedom of speech guaranteed by the Constitution of the United States and the First Amendment thereto, and did not violate the Wagner Act.

9. That the Board erred in failing to sustain the ninth exception of the Respondent and refusing to strike out or require an amendment to aver particulars in the case of the language contained in paragraph nine of the complaint charging the Respondent with interfering with, restraining and coercing its employees by various and sundry other means well known to the respondent, in that there was no due process of law as required by the Fifth and Fourteenth Amendments to the Constitution of the United States to require the Respondent to go to trial upon such allegations without apprising Respondent in the complaint of the nature of the charge against Respondent, and the said complaint and the trial based thereon and

the examiner's report based thereon and the Board's order based thereon do not comply with the fundamental requirements of a fair trial.

10. That the Board erred in failing to sustain the tenth exception of the Respondent and finding that the Respondent caused Hall's statement to be read to its employees for the purpose of coercing them and discouraging the activities of the Guild, in that there is no evidence to support such finding.

11. That the Board erred in failing to sustain the eleventh exception of the Respondent and finding that the Respondent caused Hall's statement to be read to its employees for the purpose of coercing and discouraging the activities of the Guild, in that there is insufficient evidence to support such finding.

12. That the Board erred in failing to sustain the twelfth exception of the Respondent and finding that the effect of the activities of the Respondent has interfered with, restrained and coerced its employees, in that there is no evidence to support such finding.

13. That the Board erred in failing to sustain the thirteenth exception of the Respondent and finding that the Respondent has interfered with, restrained and coerced its employees, in that there is insufficient evidence to support the finding.

14. That the Board erred in failing to sustain the fourteenth exception of the Respondent and finding that Respondent has discouraged membership in the San Antonio Newspaper Guild, in that there is no evidence to support such finding.

15. That the Board erred in failing to sustain the fifteenth exception of the Respondent and finding that Respondent has discouraged membership in the San Antonio Newspaper Guild, in that there is insufficient evidence to support such finding;

16. That the Board erred in failing to sustain the sixteenth exception of the Respondent and finding that the statement read by Hall constituted a violation of the Wagner Act, because there was no evidence that the statement had any effect on any of the employees to coerce, interfere with, restrain or affect them in any manner.

17. The Board erred in failing to sustain the seventeenth exception of the Respondent and finding that the Respondent refused to submit a counter proposition to the Guild as a basis for negotiating, because there is no evidence to support such finding.

18. That the Board erred in failing to sustain the eighteenth exception of the Respondent and finding that the Respondent refused to discuss or negotiate over each paragraph of the proposal with the Guild's representatives, in that such finding is not supported by any evidence.

19. That the Board erred in failing to sustain the nineteenth exception of the Respondent and finding that the Respondent refused to submit a counter proposal, in that such finding is not supported by any evidence.

20. That the Board erred in failing to sustain the twentieth exception of the Respondent and finding that the Respondent refused

to negotiate, in that such finding is not supported by any evidence, it being shown by the undisputed evidence that the Respondent did negotiate but that the parties did not arrive at an agreement.

21. That the Board erred in failing to sustain the twenty-first exception of the Respondent and not finding in reference to the meeting of August 4 called by LeBaron, representative of the Labor Board, that Respondent was willing to meet for further negotiations if the Guild wanted to meet.

22. That the Board erred in failing to sustain the twenty-second exception of the Respondent and finding that the Respondent refused to bargain collectively with the Guild, because the undisputed evidence shows that the Respondent did not refuse to do so, but in fact did bargain collectively with the Guild as a representative of its employees.

23. That the Board erred in failing to sustain the twenty-third exception of the Respondent and finding that the activities of the Respondent have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, in that it is shown by the evidence that same do not have any substantial connection with and do not obstruct interstate commerce or the free flow thereof, and said finding is not supported by the evidence.

24. That the Board erred in failing to sustain the twenty-fourth exception of the Respondent and basing its conclusions and order on the findings referred to in the foregoing paragraphs.

25. That the Board erred in failing to sustain the twenty-fifth exception of the Respondent and making findings not limited to the matters complained of in the complaint, in that the complaint charged merely that Hall's statement had the effect of discouraging membership and that Respondent had refused to agree to any proposal made by the Union and refused to offer a counter proposal, whereas the Board undertakes to find that the Respondent refused to bargain collectively and also that Respondent did in fact coerce and interfere with and restrain its employees from the exercise of the rights guaranteed to them by the Act and discourage membership in the Guild, so that the Board undertakes to find the Respondent guilty of violations of the Act not charged by the Complaint, in violation of the due process provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and in denial of respondent's right to a fair and orderly trial.

27. That the Board erred in failing to sustain the twenty-seventh exception of the Respondent and ordering that the Respondent bargain collectively, when the evidence shows that it has been bargaining collectively with the Guild and that it has outstanding tenders and offers to continue to bargain collectively and that negotiations were broken off by the Guild and not by the Respondent.

28. That the Board erred in failing to sustain the twenty-eighth exception of the Respondent and ordering the Respondent to post

notices that it will cease and desist from interfering with, restraining or coercing its employees, in that Respondent denied, and still denies, that it has done so, and therefore said requirement which in fact requires Respondent to sign a confession or admission that it has been guilty of such unlawful practice and therefore will cease such practice, would be a violation and infringement upon the liberty of speech guaranteed by the First Amendment to the Constitution of the United States, since liberty of speech includes freedom to be silent as well as to speak, and would be a violation of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States guaranteeing due process of law. Said requirement exceeds the power vested in the Labor Board, which did not include the power to extort or require "confessions," especially where the party is denying the truth thereof.

29. That the Board erred in failing to sustain the twenty-ninth exception of the Respondent and in making the conclusions of law and the orders made, in that it appears from the entire proceedings by the undisputed evidence that the Respondent bargained collectively with the Guild as the representative of its employees in the Union, in full accord with the Act, but merely failed to reach an agreement, and that there was therefore no violation of the Act, since the Act requires only that Respondent bargain collectively and not that the parties reach an agreement.

30. In further response, the Respondent avers that its business consists of the publication of a morning and of an afternoon newspaper in the City of San Antonio; that as shown by the undisputed evidence, an inconsequential or nominal portion only of its circulation is transmitted in interstate commerce, and most of its circulation is in the City of San Antonio and the Counties immediately surrounding it in Southwest Texas; that its employees are all local employees within the State of Texas, principally in the City of San Antonio, and its only place of business is in the City of San Antonio, Texas; that while it purchases a portion of its supplies in the way of blank paper and a portion of its ink from outside the State of Texas, and other small physical materials that are not the consequential portions of its business, its important business being the news and editorial articles written and published by it for the service of its patrons in Southwest Texas, and incidental thereto advertising displayed in its papers for persons desiring to advertise their merchandise in Southwest Texas; that as shown by the evidence, the news and editorial departments involved in this matter are all local employees in the City of San Antonio, Texas, whose activities are wholly within the State of Texas; that the Respondent's newspapers are essentially local papers, published for the local field entirely within San Antonio and its trade territory within Southwest Texas, so that Respondent believes, and upon such belief avers, that the Board was without jurisdiction.

31. The Respondent further avers that it appears by the undisputed evidence that the statement complained of read by Hall consisted

of two portions: First, a statement of the meaning of the Wagner Act and that the statement was a correct statement of the law in reference thereto; and Second, a claim asserted on behalf of the Respondent that it was entitled to the credit for the expenditures it had made for the betterment of working conditions among its employees. It would be a denial of the freedom of speech guaranteed by the provisions of the Constitution above referred to deny the Respondent the right to state the contents of the Wagner Act, and that it would be a denial of the freedom of speech guaranteed by said provisions of the Constitution to deny to the Respondent the right to claim credit for the expenditures made by it out of its own funds for the betterment of the working conditions of its employees. Therefore, the Board erred in finding that the said statement was made in violation of the Wagner Act.

32. The Board erred in finding that the statement made by Hall had the effect of coercing, etc., the employees, for there was no evidence that any employee withdrew from the Guild or refused to join the Guild by reason of such statement or was coerced or intimidated or affected in any manner thereby, and such finding was without any evidence to support it. Respondent believes, and therefore alleges, that to sustain the finding of such a violation it would be necessary that there be evidence not only that such a statement was made, but that it did in fact have the effect of coercing, etc., the employees, and there being no such evidence, the Board erred in finding such violation of the Wagner Act and basing its order thereon.

33. The Board erred in finding that the Respondent refused to bargain collectively and therefore violated the Wagner Act, because the undisputed evidence shows that upon the request of the Guild to bargain collectively the Respondent promptly met with the Guild's representatives; that the Guild presented a written proposed contract to Respondent; that Respondent considered the contract with care and met again with the Guild's representatives and negotiated both orally and in writing with the Guild's representatives, setting out in great detail the reasons why it considered each portion of the proposed contract unacceptable to it; that a number of meetings were held and negotiations carried on at great length; that although the Guild's representatives admitted that the proposal they had made was unwarranted and unjustified and unreasonable, they refused to make any other proposal; that the Respondent contended that the terms of employment as they presently existed were reasonable, and the parties were unable to agree, so that it appeared from the undisputed evidence that the Respondent did bargain collectively, and the Board's finding to the contrary is not supported by the evidence and its order based thereon is in error.

34. The Respondent avers that as shown by the undisputed evidence the Guild proposals consisted of principally (1) Various provisions which would increase the cost of employment, and (2) Various restrictions, direct and indirect, upon the Respondent's power to employ or discharge in said departments or control its editorial and news

policies. The undisputed evidence shows that these differences were discussed both in writing and orally and bargained over at great length by the numerous representatives of the Guild and the Respondent, and the parties could not come to an agreement. The Respondent avers that the obligation to bargain collectively does not require the Respondent to enter into any agreement increasing its costs if it deems that it should not do so; likewise, that the Wagner Act does not require the Respondent to abandon its present policy of retaining its power to employ and discharge at will with full control over its editorial and news departments; that the evidence shows that it was the Respondent's policy, arrived at in good faith and continued without variation since the founding of its newspapers, to retain such control of its editorial and news departments so as to maintain its independence as a free press, and that while the Wagner Act in cases involving interstate commerce imposed a duty upon the employer to bargain collectively as to whether it was willing to relinquish or restrict its right to employ and discharge and its power to control its news and editorial departments, it did not in any manner impose any obligation upon Respondent to be persuaded in such bargaining to contract away its freedom to conduct its editorial and news departments according to its own belief as to the manner in which they would best serve its function as a free press. And Respondent avers that the findings and order of the Board are based upon the theory that the Wagner Act imposes upon the Respondent not merely the obligation to bargain with the Guild as to whether it is willing to contract and barter away such freedom, but also the obligation, regardless of whether by such bargaining it is convinced of the wisdom thereof, to in fact enter into a contract of some nature to limit its rights in these respects. Respondent avers on the contrary that there is nothing in the Wagner Act requiring the Respondent to abandon its practice of employing persons in its editorial and news departments subject to termination of such employment at any time either by the employer or by the employee at will; and there is nothing in the Wagner Act which requires it to enter into any agreement fixing arbitrary standards for advancement of employees in such departments according to longevity of service or other artificial standards rather than the Respondent's belief in their professional ability or their ability to best aid in enunciating and promulgating the editorial and public principles represented by the Respondent's newspapers.

Wherefore, the Respondent respectfully says that the petition to enforce the Board's order should be denied.

EXPRESS PUBLISHING COMPANY, *Respondent.*
By DENMAN, FRANKLIN & DENMAN.
(Signed) LEROY G. DENMAN.
(Signed) LEROY G. DENMAN, JR.,
Attorneys.

THE STATE OF TEXAS,
County of Bexar.

Frank G. Huntress, being duly sworn, states that he is the President of the Express Publishing Company; that he is authorized to and does make this verification in behalf of the Express Publishing Company; that he has read the foregoing answer and has knowledge of the contents thereof and that the statements made therein are true to the best of his knowledge, information and belief.

(Signed) FRANK G. HUNTRESS.

Subscribed and sworn to before me by Frank G. Huntress this 3rd day of February, A. D. 1940.

(Signed) W. A. DRUCE,
Notary Public within and for Bexar County, Texas.

Argument and submission

Extract from the Minutes of April 15th, 1940

No. 9408

NATIONAL LABOR RELATIONS BOARD
versus
EXPRESS PUBLISHING COMPANY

On this day this cause was called, and, after argument by Mortimer B. Wolf, Esq., Attorney, National Labor Relations Board, for petitioner, and Leroy G. Denman, Esq., for respondent, was submitted to the Court.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 9408

NATIONAL LABOR RELATIONS BOARD, PETITIONER
versus
EXPRESS PUBLISHING COMPANY, RESPONDENT

Petition for the Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(May 7, 1940)

Before SIBLEY, HOLMES, and MCCORD, Circuit Judges

HOLMES, Circuit Judge: The respondent, a Texas corporation engaged at San Antonio in the publication of the Morning Express and the Evening News, was found guilty of unfair labor practices by petitioner, and ordered to cease and desist therefrom, as well as

to take certain affirmative action which the petitioner found would effectuate the policies of the National Labor Relations Act, the order being issued pursuant to Section 10 (c), and the jurisdiction of this court being based upon Section 10 (e), of the act. 49 Stat. 449, 29 U. S. C. A. 151, et seq.

The Board found that respondent had refused to bargain collectively with the San Antonio Newspaper Guild, a labor organization, contrary to Section 8 (1) and (5) of the act, and that respondent, by reading a certain statement to its employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the act, contrary to Section 8 (1) of the act. In addition to requiring respondent to cease and desist from the unfair labor practices found, the Board ordered it to bargain collectively with the Guild, and, if an understanding were reached, to embody it, upon request, in a signed agreement, and to post appropriate notices. The respondent does not object to putting into the form of a signed agreement any understanding which may be reached with the Guild, but denies that there is any evidence in the record to support the findings of the Board.

An analysis of the evidence, and even the argument of counsel for the Board, reduce the question of a refusal to bargain collectively with the Guild to the good faith of the respondent in conducting the negotiations. The facts appear partly in written negotiations, and partly in stenographic reports of the meetings at which the negotiations were had, all of which are stipulated. The Guild's representatives were promptly recognized by the employer, and negotiations conducted at great length. In March 1938, the Guild asked for a meeting to bargain. A date was agreed upon, the meeting held, and the bargaining commenced.

The Guild submitted a contract with many provisions. The employer read a statement outlining its position. It expressed a willingness to exchange viewpoints with the Guild, to consider its proposals, and to notify it as the representative of the employees; and yet we think there was evidence to support the finding of the Board that respondent had determined in advance never to agree to anything. In law this was a refusal to bargain. Of course respondent was not bound to make any agreement, and technically it was not bound to make a counterproposal, but it was required to meet its employees with an open mind, and, if it was unwilling to do more than maintain its present status, to say so, and to express a willingness to have that as the agreement between them. It looks to us like both sides were sparring more to make a record to go before the Board than trying to get at anything practical. They are both to blame that nothing whatever came out of the negotiations.

The Board's finding that respondent interfered with its employees' right of self-organization and collective bargaining is based upon a statement of the employer read to its employees a few days after the respondent had rejected the Guild's proposal. It is argued that this statement was intended to impress upon the employees that

they did not need a labor organization; that respondent was giving them fair working conditions, and that a labor organization could obtain no improvements for them. There is nothing in the statement to support the finding that it was intended to impress upon the employees that they did not need a labor organization, and the respondent denies that such was the purpose or effect of the statement. The burden of proof was on petitioner as to this charge in the complaint, and we find no evidence at all which meets that burden.

Some of respondent's employees had come directly to it, asking what would be the effect of their joining the union. It undertook to tell them what its understanding of the matter was, and told them truthfully. Its spokesman offered to testify that he did not intend any interference with union activities, and, to prevent his doing so, the complaint was amended by striking out the allegation about intention and substituting an allegation that it had the effect of obstructing the union. No evidence whatever was introduced that it had any such effect on anybody. The employee who had propounded the question went ahead and joined the union; and that is all we have on the subject. We find no evidence to support the finding that what respondent did in this respect was an unfair labor practice.

The order of the Board will be modified by striking out all of it except that part which directs the respondent, upon request, to bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of respondent's employees named in the order. As so modified, the order will be enforced.

In the United States Circuit Court of Appeals for the Fifth Circuit

Decree

Extract from the minutes of May 7th, 1940

No. 9408

NATIONAL LABOR RELATIONS BOARD

versus

EXPRESS PUBLISHING COMPANY

This cause came on to be heard on the petition of the National Labor Relations Board for the enforcement of the order of said National Labor Relations Board entered on July 28, 1939, "In the Matter of Express Publishing Company and San Antonio Newspaper Guild," Case No. C–1071, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said National Labor Relations Board be modified so as to read, as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Express Publishing Company, San Antonio, Texas, and its officers, agents, succes-

sors, and assigns shall take the following affirmative action, which the Board finds will effectuate the policies of the Act:

"(a) Upon request, bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys, and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News, with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in a signed agreement, if requested to do so by the Guild.

"(b) Notify the San Antonio Newspaper Guild, as the exclusive representative of the aforesaid employees, within ten days from date hereof, of its willingness to comply with this order.

"(c) Notify the regional director for the Sixteenth Region in writing, within ten days from the date of this order, what steps respondent has taken to comply herewith,"

and as so modified, said order shall be enforced.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 9408

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY, RESPONDENT

PETITION OF NATIONAL LABOR RELATIONS BOARD FOR REHEARING AND FOR ORAL ARGUMENT ON THIS PETITION

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The National Labor Relations Board respectfully petitions this Honorable Court for a rehearing in the above-entitled cause, and for oral argument on this petition. In support of this petition, the Board respectfully shows to the Court as follows:

I

The court erred in refusing enforcement to paragraphs 1 (a), 1 (b), 2 (b), and 2 (c) of the Board's order

The decision of this Court, issued May 7, 1940, provides that—

"The order of the Board will be modified by striking out all of it except that part which directs the respondent upon request, to bargain collectively with the San Antonio Newspaper Guild as the exclusive representative of respondent's employees named in the order. As so modified, the order will be enforced."

The effect of this direction is to grant enforcement only to paragraph 2 (a) of the Board's order, which requires respondent, as affirmative action, to bargain collectively with the Guild, embodying in a signed agreement such understandings as may be reached. As phrased, the opinion denies enforcement to the following portions of the order: (1) the requirement that respondent cease and desist from refusing to bargain collectively with the Guild (paragraph 1 (a)); (2) the requirement that respondent cease and desist from interfering with, restraining, and coercing its employees in the exercise of their rights of self-organization and collective bargaining (paragraph 1 (b)); (3) the affirmative requirement that respondent post notices informing its employees that it will cease engaging in unfair labor practices and will bargain collectively with the Guild (paragraph 2 (b)); (4) the affirmative requirement that respondent notify the Board's Regional Director what steps it has taken to comply with the order (paragraph 2 (c)).

The Board is of the view that the enforceability of these provisions of its order is firmly established by the decisions of the Supreme Court and of this and other Circuit Courts of Appeals. We shall consider briefly each of the provisions stricken from the order.

1. Cease and desist from refusing to bargain.—In view of the fact that the Court expressly affirmed the Board's finding that respondent refused to bargain collectively with the Guild and has granted enforcement to the affirmative portion of the collective bargaining order, the failure similarly to enforce the cease and desist provision relating to collective bargaining may have been purely inadvertent. It is, of course, well-settled that under Section 10 (c) of the Act the entry of a cease and desist order is mandatory upon the Board with respect to each unfair labor practice in which the employer is found to have engaged. The Supreme Court in National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261, 265, made this abundantly plain, stating—

"* * * § 10 (c) directs that when the Board finds that any person has engaged in unfair labor practices it 'shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act * * *.'

"Notwithstanding the mandatory form of § 10 (c), its provisions in substance leave to the Board some scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an *affirmative* order, and in choosing the particular *affirmative* relief to be ordered. Hence, *upon the challenge of the affirmative part of an order* of the Board, we look to the act itself, read in the light of its history, to ascertain its policy, and to the facts which the Board has found, to see whether they afford a basis for its judgment that the action ordered is an appropriate means of carrying out that policy." [Italics supplied.]

It is clear from this language, as it is from the Act, that while a

discretionary power is confided to the Board to determine the proper form of affirmative action (the Greyhound case, supra; National Labor Relations Board v. Mackay Radio Co., 304 U. S. 333, 348) no discretion is left where the question is whether a cease-and-desist order shall issue. The Act itself requires such an order as to any unfair labor practice found, and this direction is binding upon both the Board and the Court. See National Labor Relations Board v. Bradford Dyeing Ass'n (U. S. Sup. Ct.), decided May 20, 1940. Not only is the failure to enforce the order to cease and desist from refusing to bargain collectively contrary to the Supreme Court's construction of Section 10 (c), but it is inconsistent with the result reached by this Court in other decisions. National Labor Relations Board v. Lane Cotton Mills, decided May 9, 1940; National Labor Relations Board v. Whittier Mills Company, etc., decided May 2, 1940; Mexia Textile Mills v. National Labor Relations Board, 110 F. (2d) 565; National Labor Relations Board v. Brown Paper Mill Co., 108 F. (2d) 867.

2. Cease and desist from interfering with the rights guaranteed in Section 7 of the Act.—The Court's refusal to enforce this provision of the cease-and-desist order presumably resulted from its rejection of the Board's finding that Secretary Hall's statement of April 4, 1938, was an interference with the rights of petitioner's employees. However, entirely apart from the Board's finding with respect to the Hall statement, there exists a wholly independent ground, apparently overlooked by the Court, upon the basis of which paragraph 1 (b) was entitled to enforcement. We refer to the fact that a violation of Section 8 (5), or any other subdivision of Section 8, constitutes an interference with the rights of self-organization and concerted activity guaranteed in Section 7, and hence is violative of Section 8 (1) as well. The correctness of this proposition is now established beyond debate. The Congress expressly so stated,[1] and the overwhelming weight of authority is in accord. We call the attention of the Court particularly to the recent holdings of the Circuit Courts of Appeals for the Second and Fourth Circuits in Art Metal Construction Company v. National Labor Relations Board, 110 F. (2d) 148, 150–151 (C. C. A. 2), and National Labor Relations Board v. Highland Park Mfg. Co., 110 F. (2d) 632, 639 (C. C. A. 4). In the Art Metal case the Court, per Judge Learned Hand held:

"Article I (b) of the order rests upon the premise that an unfair labor practice under § 8 (5) is also an unfair practice under § 8 (1), and that is contrary to our ruling in N. L. R. B. v. Remington-Rand,

---

[1] "The succeeding unfair labor practices are intended to amplify and state more specifically certain type of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1)." (House Report No. 1147, 74th Cong., 1st Sess., p. 17.)

"The four succeeding unfair labor practices are designed not to impose limitations or restrictions upon the general guarantees of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome." (Senate Report No. 573, 74th Cong., 1st Sess., p. 9).

94 Fed. (2d) 862, 869, which the Board has since then consistently refused to follow. Globe Cotton Mills v. N. L. R. B., 103 Fed. (2d) 91 (C. C. A. 5), accords with us, but N. L. R. B. v. Biles-Coleman L. Co., 98 Fed. (2d) 18, 22, 23 (C. C. A. 9) is contrary. Except for the new light now thrown upon the matter, we should still be unconvinced; but we learn that both the Committee of the House and the Committee of the Senate in reporting the bill declared that §§ 8 (2), 8 (3), 8 (4), and 8 (5) were species of the generic unfair labor practice defined in § 8 (1). Certainly the language does not so plainly forbid that construction that we must disregard it; on the contrary, we consider it authoritative. For that reason we overrule our holding—it was in no sense a dictum—in N. L. R. B. v. Remington-Rand, Inc., supra (94 Fed. (2d) 862, 869)."

To the same effect is the statement of Judge Parker for the Court in the Highland Park decision:

"There can be no question, we think, but that a refusal to bargain collectively with representatives chosen by employees amounts to an interference with their right of self-organization for the purpose of collective bargaining within the meaning of the Act; and it is interesting to note that the decision to the contrary by the Second Circuit in the Remington-Rand case, 94 F. (2d) 862, has just been overruled by that court in the recent Art Metals Construction Co. case, supra. To like effect is the decision of the Ninth Circuit in the case of N. L. R. B. v. Biles-Coleman Lumber Co., 9 Cir. 98 F. (2d) 18, 22–23. And we think it clear that it was proper for the order to forbid generally any interference with the right of self-organization and not merely the particular kind of interference covered by the findings of the Board. N. L. R. B. v. Swift & Co., 7 Cir. 108 F. (2d) 988."

The Third, Sixth, and Ninth Circuit Courts of Appeals are in accord. National Labor Relations Board v. Griswold Manufacturing Company, 106 F. (2d) 713, 715–716 (C. C. A. 3); National Labor Relations Board v. Louisville Refining Co., 102 F. (2d) 678 (C. C. A. 6) cert. den., 308 U. S. 568; National Labor Relations Board v. Carlisle Lumber Co., 94 F. (2d) 138 (C. C. A. 9) cert. den., 304 U. S. 575; National Labor Relations Board v. Biles-Coleman Lumber Co., 98 F. (2d) 18, 22–23 (C. C. A. 9). No circuit is now to the contrary, except that the point appears to be unsettled in this Circuit.

This Court, in National Labor Relations Board v. Lane Cotton Mills Co., decided 2 days after the decision in the instant case, indicated its acceptance of the prevailing rule, declaring:

"The respondent's flat refusal to bargain with the T. W. O. C. or its committee supports the finding that Lane had interfered with its employees in the exercise of the rights guaranteed by Section 7 by refusing to bargain collectively within the meaning of Section 8 (5)."

The resolution of the conflict between the present case and the Lane Cotton Mills decision in accordance with the correct rule laid down

in the latter case is, we submit, essential to the orderly and effective administration of the Act.[2]

3. Post appropriate notices. The requirement that respondent post notices to its employees stating that it will cease and desist from its unfair labor practi[illegible] and will bargain collectively as directed by the Board is in the fo[illegible]peatedly approved by this Court.[3] No reason whatever is given by the Court or suggests itself why this provision of the order should not be enforced. The Supreme Court, in National Labor Relations Board v. Falk Corporation, 308 U. S. 453, recently sustained the validity of precisely such an order in the following words:

"The Court also modified the Board's order by omitting the requirement that the notices to be posted in the plant contain a statement that the company would cease and desist' from its unlawful activities. As stated in the first opinion of the court below, the purpose of the Board in requiring the company to publish notices assuring its employees that it would 'cease and desist' had been 'to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliations.' Knowledge on the part of the men that the company would cease and desist from hampering, interfering with, and coercing them in selection of a bargaining agent, which the Board found the company had done successfully in the past, was essential if the employees were to feel free to exercise their rights without incurring the company's disfavor."

This holding of the Falk decision was expressly reaffirmed by the Supreme Court in the Bradford Dyeing case, supra.

4. Notification of compliance.—Finally, the direction to notify the Board's Regional Director what steps have been taken to comply with the order is a requirement whose validity is so well settled, which is so eminently reasonable, and so important to proper administrative supervision of compliance that the Court's failure to enforce it cannot have been other than inadvertent. In none of the approximately 150 cases decided under the Act by the United States Supreme Court and by the Circuit Courts of Appeals, including this Court, has the validity or propriety of this provision been impugned in any

---

[2] National Labor Relations Board v. Whittier Mills Co., decided by this Court on May 2, 1940, is likewise consistent with the Lane Cotton Mills decision and inconsistent with the present case. There the Court upheld the Board's determination that certain facts which the Board found to constitute a violation of Section 8 (5), "interfered with and coerced" employees in the exercise of their organizational rights, and hence violated Section 8 (1). In the light of these express adjudications, we submit that the contrary rule laid down in the earlier Globe Cotton Mills decision, 103 F. (2d) 91, can no longer be regarded as the doctrine of this Court.

[3] Agwilines, Inc. v. National Labor Relations Board, 87 F. (2d) 146; National Labor Relations Board v. Pure Oil Co., 103 F. (2d) 497; National Labor Relations Board v. Brown Paper Mill Co., 108 F. (2d) 867; National Labor Relations Board v. Whittier Mills Co., decided May 2, 1940; National Labor Relations Board v. Lane Cotton Mills, decided January 5, 1940. In the Brown Paper decision the Court said:

"Respondent's complaint of the order, that it requires it to confess the guilt it has all along denied, and that, if it publishes the notices the order requires, it will be not only confessing sin, but in the position of advising its employees that they cannot organize and maintain an independent union, is not well taken. The order is in the usual form, approved by this Court in numerous cases, beginning with Agwilines v. National Labor Relations Board, 87 Fed. (2d) 146. It requires no confession. It merely orders appellant to state that it will comply with the Board's order. It has judicial precedent in the decree in the Clerk's case, and it in no manner interferes with or purports to interfere with the exercise by the employees of their truly independent choice."

way. It has uniformly been enforced in the past and should be enforced in this case.

II

The Court erred in holding that a showing of the actual coercive effect of employer conduct is prerequisite to a finding that such conduct violates Section 8 (1)

The Court's refusal to sustain the Board's finding that the Hall statement constituted an interference with the free exercise of the rights guaranteed to employees in Section 7 of the Act appears to be based, in part at least, upon the absence of any showing that the statement induced any of respondent's employees to abandon the Guild. In this, we submit, the Court erred. The Act does not require, as a prerequisite to a finding that employer activity is violative of Section 8 (1), a showing that the conduct in question actually coerced the employees toward whom it was directed. Once the employer has been shown to have engaged in conduct reasonably calculated to "interfere with, restrain, or coerce" employees in the exercise of their right to self-organization, the Act itself supplies the connection between the deed and the result. The situation is analogous to that presented where the question is whether an employer's unfair labor practices "affect commerce" within the meaning of the Act. When the employer's business is shown to be such that the occurrence of a strike or other labor dispute would be capable of interfering with or obstructing interstate or foreign commerce, the Act applies. It is unnecessary to show that the unfair labor practices did, in fact, result in the obstruction or interruption of interstate commerce; it is sufficient that, in the words of Section I of the Act, "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury," and that "The denial by employers of the right of employees to organize * * * leads to strikes and other forms of industrial strife" which burden commerce. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 41; Consolidated Edison Company v. National Labor Relations Board, 305 U. S. 197, 222.

Similarly, "experience has proved" that certain conduct of employers normally inhibits and interferes with the free exercise by employees of their right to join and act through unions. True, some employees may have greater powers of resistance to employer pressure than other employees. But the question whether the Act has been violated cannot be made to depend upon the capacity or incapacity of particular individuals to withstand employer coercion. The standards of conduct which the Act sets up are, necessarily, general and objective. The question in a given case is not whether a particular employee was coerced by certain employer behaviour into abandoning his rights under the Act, but whether the expert body empowered by Congress to draw the inferences as to the meaning and effect of

employer conduct could reasonably conclude that the conduct in question would normally tend to restrain employees in the exercise of their statutory rights: To substitute for this simple, clear, objective rule a test by which the legality or illegality of an employer's actions would be made to depend on the degree of sensitivity of particular employees, would make impossible the formulation of definite standards of conduct under the Act. The statute aims not only at the remedying of the effects of actual employer coercion, but at the *prevention* of conduct shown by experience to result in such coercion. As with the question whether unfair labor practices "affect commerce," the application of the Act need not await a showing that the employer's unfair labor practices have succeeded in accomplishing their unlawful purpose. "Congress was entitled to provide reasonable preventive measures and that was the object of the National Labor Relations Act." Consolidated Edison Company v. National Labor Relations Board, 305 U. S. 197, 222.

These conclusions are reinforced by judicial authority. In System Federation No. 40 v. Virginian Railway Co., 11 F. Supp. 621, affirmed 84 F. (2d) 641 (C. C. A. 4), affirmed 300 U. S. 515, one of the questions at issue was whether the so-called Sasser statement constituted an interference with the right of the railway employees to self-organization. The District Court held (11 F. (Supp. at 633)):

"In addition, I hardly think that any one can read with an open mind the Sasser statement referred to and quoted at length above without fairly concluding that it was printed and circulated to "use the authority and power" of the Railway "to induce action" by the members of the craft "in derogation of what the statute calls 'self-organization'." *That it probably and naturally had the intended effect on many of those to whom it was delivered is no more than a reasonable inference to be drawn from the situation and power of the author over those to whom it was addressed.* It is likewise clear that similar acts will be continued in the future to defeat or seriously interfere with self-organization and representation unless prohibited." [Italics supplied.]

This language, which was given full approval by the Circuit Court of Appeals for the Fourth Circuit (84 F. (2d) at 643–644), clearly recognizes that the actual coerciveness of particular employer conduct need not be affirmatively shown, but is "a reasonable inference to be drawn from the situation * * *." Similarly, in National Labor Relations Board v. A. S. Abell Co., 97 F. (2d) 951, 956 (C. C. A. 4), the court upheld an order of the Board directing an employer to cease and desist from interfering with the rights guaranteed in Section 7 of the Act, despite the fact that, in the Court's words—

"There was no evidence that any employee of the pressroom was actually coerced or restrained from joining the Union or from remaining a Union member when once he had joined."

Finally, in its recent decision in National Labor Relations Board v. Whittier Mills Co., decided May 2, 1940, this Court itself expressed its approval of the rule for which we are here contending. In that case

the Court upheld the Board's finding that certain employer conduct "necessarily discouraged the employees in maintaining their connection with and representation by" a union committee, despite the absence of any "express proof that any employee was in fact affected or changed his course thereby." In no decision except that in the present case has any court required proof of this kind as prerequisite to enforcement of the Board's order.

We respectfully submit that the rule laid down in the instant case misconceives the true basis for determining the legality of employer conduct under the Act; is inconsistent with other decisions of this Court; and is impossible of practical application. We earnestly request that the Court reconsider and modify its holding in accordance with the principles herein set out.

CONCLUSION

Wherefore it is prayed that a rehearing of this case be granted and that on such reconsideration the decision of the Court herein be modified in the manner above suggested. In the event that the Court is in doubt as to the merits of any ground made the basis of this petition, the Board urges that because of the serious importance of the questions involved, it be given an opportunity to present its position in oral argument before the Court. The questions are important because it is contrary to the entire design of the statute that, when the reviewing court has approved the Board's findings that unfair labor practices were committed, provisions of the Board's order based upon such findings and of established validity under the Act and controlling decisions, should nevertheless be denied enforcement. Refusal to enforce valid portions of a Board order, particularly injunctive cease and desist provisions intended to operate in futuro, eliminates most of the bases for contempt proceedings, the ultimate and sole sanction provided by Congress for enforcement of the Act. In the words of the Supreme Court in its recent Bradford Dyeing decision, supra—

"Congress has placed the power to administer the National Labor Relations Act in the Labor Board, subject to the supervisory powers of the Courts of Appeals as the Act sets out. If the Board has acted within the compass of the power given it by Congress, has, on a charge of unfair labor practice, held a 'hearing,' which the statute requires, comporting with the standards of fairness inherent in procedural due process, has made findings based upon substantial evidence, and has ordered an appropriate remedy, a like obedience to the statutory law on the part of the Court of Appeals requires the court to grant enforcement of the Board's order."

Respectfully submitted.

CHARLES FAHY,
General Counsel,
ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

Certificate of counsel

Comes now Charles Fahy, General Counsel for the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is filed in good faith, and not for purposes of delay.

CHARLES FAHY.

Washington, D. C., May 1940.

Order denying rehearing

Extract from the Minutes of June 17th, 1940

No. 9408

NATIONAL LABOR RELATIONS BOARD

versus

EXPRESS PUBLISHING COMPANY

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Clerk's certificate

UNITED STATES OF AMERICA,
United States Circuit Court of Appeals, Fifth Circuit.

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 77 to 110, next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9408, wherein National Labor Relations Board is petitioner, and Express Publishing Company is respondent, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volume I, numbered from 1 to 76, are identical with the printed record upon which said cause was heard and decided in the said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 26th day of August, A. D. 1940.

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.
By ——— ———, *Deputy Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1940

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY

It is hereby stipulated and agreed by and between the attorneys for the above-named parties that for the use of the Court on petition for writ of certiorari the record in the above case shall consist of the following:

1. Volume I: The transcript of record of the proceedings in the United States Circuit Court of Appeals for the Fifth Circuit.
2. Volume II: The Appendix to Petitioner's Brief, Part I, filed in the United States Circuit Court of Appeals for the Fifth Circuit.
3. Volume III: The Appendix to Petitioner's Brief, Part II, filed in the United States Circuit Court of Appeals for the Fifth Circuit.
4. Volume IV: Copy of Respondent's Exhibit 1, Appendix to Respondent's Brief, filed in the United States Circuit Court of Appeals for the Fifth Circuit.
5. The typewritten transcript of the entire record of the proceedings before the National Labor Relations Board, together with the original exhibits filed in the United States Circuit Court of Appeals for the Fifth Circuit.

It is further stipulated and agreed that in the event the petition for a writ of certiorari is granted, a record shall be printed under the direction of the Clerk of the United States Supreme Court to include such portions of the proceedings before the National Labor Relations Board and before the United States Circuit Court of Appeals for the Fifth Circuit as may be stipulated by the parties pursuant to Rule 38, Section 8, of the Revised Rules of the Supreme Court.

N. A. TOWNSEND,
Acting Solicitor General.
LEROY G. DENMAN,
Counsel for the Respondent.

262800—40

U. S. GOVERNMENT PRINTING OFFICE: 1940

BLANK PAGE

Supreme Court of the United States

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In Supreme Court of the United States

Stipulation in re record on writ of certiorari

Filed Dec. 9, 1940

It is hereby stipulated and agreed by and between the attorneys for the above-named parties that the record filed in this Court with the petition for certiorari may be used in the hearing of this case on the merits and no further printing is necessary.

FRANCIS BIDDLE,
Solicitor General,
Counsel for Petitioner.
LEROY G. DENMAN,
Counsel for Respondent.

U. S. GOVERNMENT PRINTING OFFICE: 1941

BLANK PAGE

BLANK PAGE

CLERK'S COPY.

VOLUME II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

BLANK PAGE

INDEX

Witnesses	Direct	Cross	Redirect	Recross
FRANK G. HUNTRESS	13	42		
THORNTON HALL	46	51	58	63

INDEX TO EXHIBITS

EXHIBITS	For Identification	In Evidence
B-1-A, B, & C	4	4
B-2	5	5
B-3	12	12
B-4	24	24
R-1	42	42

BLANK PAGE

1 BEFORE THE NATIONAL LABOR
RELATIONS BOARD
SIXTEENTH REGION

In the Matter of:
EXPRESS PUBLISHING COMPANY

and

SAN ANTONIO NEWSPAPER GUILD

Case No. XVI-C-293

San Antonio, Texas
October 6, 1938.

The above entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

BEFORE:

WILLIAM P. WEBB, Trial Examiner.

APPEARANCES:

L. N. D. WELLS, JR., Attorney on behalf of the National Labor Relations Board.

LEROY G. DENMAN, 215 W. Commerce Street, San Antonio, Texas, appearing for the Express Publishing Company, respondent.

FRANK G. RAGSDALE, No. 11 Circle Street, San Antonio, Texas, appearing for the San Antonio Newspaper Guild.

2 PROCEEDINGS

TRIAL EXAMINER WEBB: I wish to inform all parties that the Board's reporter makes the only official

transcript of these proceedings. Exceptions, briefs, or arguments, based upon the record must cite the official transcript and all references to the record must be to the official transcript. The Board will not certify any transcript other than its official transcript for use in any court litigation.

You may proceed, Mr. Wells.

MR. WELLS: Mr. Examiner, as Board's Exhibit No. 1-A, we offer in evidence an amended charge in Cause XVI-C-293, styled in the matter of Express Publishing Company and San Antonio Newspaper Guild, which amended charge was filed by the San Antonio Newspaper Guild by Frank G. Ragsdale, president, on the 18th day of August, 1938, with the Sixteenth Regional Office of the National Labor Relations Board.

TRIAL EXAMINER WEBB: Are you going to offer all your preliminary documents under one number?

MR. WELLS: We will be glad to.

TRIAL EXAMINER WEBB: You may put them all in under one number. A list of exhibits may be filed with the exhibits showing what is included. However, you may do it anyway you want to. I don't think it is necessary to do that.

MR. DENMAN: We have a motion to dismiss as to this charge. I don't suppose we have to present it now, but I don't want to be in the position of waiving it by not stating it now.

TRIAL EXAMINER WEBB: No. After the documents are offered, then we will hear the motions.

MR. WELLS: As Board's Exhibit No. 1-B, we offer in evidence a complaint and notice of hearing issued by Dr. Edwin A. Elliott, Regional Director of the Sixteenth Re-

gional Office of the National Labor Relations Board on September 20, 1938, to which complaint is attached a copy of the amended charge, which is in evidence as Board's Exhibit No. 1-A, and to which document is also attached a copy of the rules and regulations of the National Labor Relations Board.

At this time we would like to ask the respondent to acknowledge on the record service of complaint, notice of hearing and attached documents at least five days prior to this date in accordance with the proceedings outlined in the rules and regulations of the Board.

MR. DENMAN: We acknowledge that.

TRIAL EXAMINER WEBB: First, we will deal with the exhibits you are offering. Have you finished?

MR. WELLS: No. we haven't yet presented respondent's motion to dismiss and answer, but I thought we would take here of the complaint as it went along.

TRIAL EXAMINER WEBB: I wish to have you offer all your documents and then we will pass on them and then you can make whatever motion you wish to with respect to any of the documents.

4 MR. WELLS: Do we understand that Board's Exhibit 1-D, the complaint and the notice of hearing, is admitted?

TRIAL EXAMINER WEBB: I am waiting for you to get through.

MR. WELLS: All right. As Board's Exhibit No. 1-C, we offer an instrument styled "Answer" in Cause No. XVI-C-293, and filed by the respondent with the Sixteenths Regional Office of the National Labor Relations Board on October 1, 1938.

Those are all the formal documents, Mr. Examiner.

TRIAL EXAMINER WEBB: Are there any objections to these?

MR. DENMAN: In our motion to dismiss we have a motion to dismiss as to the charge in the complaint. Is it proper to present that now?

TRIAL EXAMINER WEBB: I will hear you after we pass on whether or not these documents will be admitted.

MR. DENMAN: Yes. Otherwise, we have no objections.

MR. RAGSDALE: Mr. Examiner, the Guild would like to make a motion to amend the complaint. Would that be in order at this time?

TRIAL EXAMINER WEBB: Not just now, please.

These documents are admitted.

(Thereupon the documents above referred to were marked as "Board's Exhibits Nos. 1-A, B, and C" for identification, and received in evidence.)

MR. WELLS: At this time, Mr. Examiner, we would like to ask the respondent to acknowledge on the record service of complaint, notice of hearing, amended
5 charge, and copy of the rules and regulations of the Board at least five days prior to this hearing in accordance with the regulations set forth by the Board.

MR. DENMAN: We do so.

MR. WELLS: And does the Union also acknowledge service, Mr. Ragsdale?

MR. RAGSDALE: Yes.

MR. WELLS: And the Union acknowledges service of respondent's answer on October 1, 1938?

MR. RAGSDALE: We do.

TRIAL EXAMINER WEBB: Could I have those documents now?

Have you the notice designating the Trial Examiner?

MR. WELLS: No, sir, Mr. Examiner.

TRIAL EXAMINER WEBB: You had better make some provision for that.

MR. WELLS: The order designating you as Examiner in this case has not yet arrived in San Antonio. I might suggest that we leave open exhibit No. 2, until it arrives and put it in then.

MR. DENMAN: That is satisfactory.

TRIAL EXAMINER WEBB: That may be done.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 2" for identification, and received in evidence.)

6 TRIAL EXAMINER WEBB: Now, I will hear you gentlemen on any motions with reference to these documents.

MR. DENMAN: We filed a motion first as to the question of jurisdiction. I take it that can't very well be presented until after the evidence is in. That is on the question of whether or not the respondent is engaged in interstate commerce, but there is another part of the motion

that deals purely with the form of the matter set out in the complaint.

TRIAL EXAMINER WEBB: Are you going to file this written motion?

MR. DENMAN: It is already filed. It is one of the documents that your Honor has.

MR. WELLS: It is a part of the answer, Mr. Examiner.

TRIAL EXAMINER WEBB: What?

MR. WELLS: It is a part of respondent's answer.
(Discussion off the record.)

MR. DENMAN: My motion, as set out in the first part of this answer, is first in reference to jurisdiction; that the Board does not have jurisdiction because the matter does not involve interstate commerce and next that the Board does not have jurisdiction because the respondent's business, being a local business within the state, is not subject to the jurisdiction of the Board, and next, that the Board does not have jurisdiction because if any part of the respondent's business consists of interstate commerce its relationship to the matters involved is so indirect and inconsequential that the matters involved are not within the jurisdiction of the Board.

Now, I take it that I can only present those motions after the evidence is in on those subjects.

TRIAL EXAMINER WEBB: I will deal with that part of your motion now.

Ruling on that part of your motion is reserved.

Now, we will go on.

MR. DENMAN: The next part we object to is paragraph 8. The complaint in paragraph 8 is defective and fails to comply with section 4 (c) of Article II of the Board's rules in avering that Hall "made further statements" without identifying the statements. Paragraph 8 sets out certain statements made by Hall, which it alleges were violative of the Act, and then goes on and says, "made further statements well known to respondent tending to have the effect of discouraging membership." Now, the point is that we cannot prepare for trial or plead to an allegation of that sort because it does not state what the statements were, when they were made, what they consisted of, and we have no way of knowing what is going to be alleged against us.

The next one is of very much the same nature of allegation. In paragraph 6 the complaint is defective and fails to comply with Section 4 (c) of Article II of the rules and regulations of the Board in that it avers that the
8 San Antonio Newspaper Guild acting by and through its duly authorized representatives Frank Ragsdale and Henry B. Dielman and others requested respondent to deal collectively in failing to state the names refeerred to by the term "and others" so that the respondent is unable to prepare for trial thereon and answer and the complaint should be dismissed or the phrase "and others" stricken out or an amendment of the complaint be required to specify such names.

Another of similar nature is that the complaint in paragraph 9 is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that by an alleged refusal to bargain collectively as set forth in detail in the allegations of paragraph 6 and by the allegations in paragraph 8, "and by various and sundry other means well known to respondent", that respondent interferred with, restrained, coerced and so forth, its employees, and the complaint is defective in that part in failing to specify or designate the "various and

sundry other means" referred to, and therefore failed to comply with the rules requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved and the time and place of occurrence so that the respondent cannot prepare for trial and the respondent requests that that complaint be dismissed or that the words "and by various and sundry other means well known to respondent" should be stricken out, or that an amendment should be required to the said complaint requiring compliance with the said rule.

9

The amended charge which is attached to the complaint, after specifying certain alleged actions on the part of the respondent, states that by the acts set forth in the paragraph Q and by other acts and conduct it by its officers, agents and employees "interferred with, restrained and coerced its employees." It is defective in failing to specify or designate the other acts or conducts referred to and therefore fails to clearly and concisely state the facts constituting the alleged unfair labor practice, as required by the rules, or the names of the individuals involved and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent so that respondent cannot properly plead or prepare for trial thereon and respondent says that such complaint should be dismissed or that said words "and by other acts and conduct it by its officers, agents and employees" should be stricken or that an amendment should be required to the complaint requiring compliance as aforesaid to said rule.

The complaint in each of these paragraphs sets out specifically certain things that are being called on and our motion is not directed to those specific allegations. For instance, in paragraph 6, it says that respondent by refusing to negotiate on a certain date, in that it did or refused to do certain things, violated . . . Our motion is not directed to that part, but to the part

10

where it says "did other things well known to respondent by which it coerced employees".

For instance, in paragraph 8, it says that Hall made certain statements and quotes them and then it says "made further statements well known to respondent . . ." Our objection is to that part "made further statements . . ." in that it does not state what they are.

In paragraph 9, near the top of the page the complaint says, first specifically, "by refusal to bargain collectively with the San Antonio Newspaper Guild as set forth in paragraph 6 above and by the statement and other activities described in paragraph 8 above . . ." That part our motion is not directed to, but it goes on and says, "by various and sundry other means well known to respondent, respondent did interfere with, restrain and coerce . . ." And so forth.

Our proposition is that it does not comply with the rules. It does not comply with the necessitates for a fair trial in that the respondent is not advised of the charges to be made against it so that it could not properly prepare for trial.

TRIAL EXAMINER WEBB: I will hear you on that, Mr. Wells, if you wish to make any remarks to the Examiner.

MR. WELLS: Well, merely, Mr. Examiner, that the matter which is not set out particularly is a matter of knowledge peculiarly available to the respondent. It does not appear to us that there is any element of surprise involved. We will be glad to set out more fully who the other negotiators were. However, I am sure the respondent knows who that was. I call the Examiner's attention to the paragraph of respondent's answer appearing on page 7 of that document which shows that respondent knows what Hall said. As a matter of fact,

they make clear that they know what he said and that all that he said was not included in the complaint. I don't think they are in the position at all of not knowing what is charged.

TRIAL EXAMINER WEBB: With reference to this motion in connection with the amended charge, have you anything to say about that?

MR. WELLS: Mr. Examiner, if I might make a statement in that regard; I don't understand we are going to trial on the amended charge. As we understand it, a charge is presented to a regional office. Pursuant to that charge an investigation is made. Then, we go to trial on a complaint, which is the complaint of the Board through its regional directors, and the issues which the Examiner and the Board will determine will be only those issues raised by the complaint and the answer.

TRIAL EXAMINER WEBB: I don't think it would work a hardship on any party at interest to reserve ruling on these motions. Therefore, I will reserve my ruling on these motions.

MR. WELLS: Mr. Examiner, I have one small amendment to the complaint, which motion I would like to present at this time if I might. I call your attention to paragraph 4 of the complaint appearing on page 2 of that document, and move to amend the complaint by inserting following the word "copy desk men" in line 2 of paragraph 4, the word "rewrite men." Paragraph 4 of the complaint will then read, "All those employees of the respondent engaged in its editorial departments, namely, city editors, reporters, copy desk men, rewrite men, artists, photographers, copy boys, librarians, sports editors and writers and society editors and writers, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, herein after referred to as the

12

Act, in order to insure respondent's employees the full benefit of their right to self-organization as to collective bargaining and otherwise to effectuate the policies of said Act,

(Discussion off the record.)

TRIAL EXAMINER WEBB: Any objections?

MR. DENHAM: No objection.

TRIAL EXAMINER WEBB: Your motion is granted.

MR. WELLS: Mr. Examiner, at this time we would like to move for an adjournment for perhaps an hour and a half or two hours. We have been in touch with the respondent in an effort to stipulate certain facts which we are sure will shorten the hearing and save time and record space, and we would appreciate a couple of hours to finish our negotiations as to the stipulation.

13 TRIAL EXAMINER WEBB: Did I understand you, Mr. Ragsdale, to say that you wished to offer a motion.

MR. RAGSDALE: The amendment which I wanted to offer is covered in Mr. Wells' amendment when he inserted the words "rewrite men".

TRIAL EXAMINER WEBB: You had reference to that too?

MR. RAGSDALE: Yes, sir.

TRIAL EXAMINER WEBB: Well, in view of your request to the effect that this recess might result in curtailing the hearing considerably, we will now adjourn until 1:00 o'clock.

(Thereupon, at 10:30 o'clock a. m., an adjournment was taken until 1:00 o'clock p. m.)

14 AFTER RECESS

(Whereupon, the hearing was resumed pursuant to recess at 1:30 o'clock p. m.)

TRIAL EXAMINER WEBB: We will resume the hearing.

Let the record show that we convened at 1:30 o'clock instead of 1:00 o'clock and then took a recess up until now pending further negotiations between counsel with reference to the stipulation.

MR. WELLS: Mr. Examiner, at this time we offer in evidence as Board's Exhibit No. 3, the stipulation entered into by the parties to this proceeding setting forth certain facts both as to jurisdiction and as to the merits of the case, to which stipulation are attached certain documents market Exhibit A through Z, and AA through EE, which exhibits are made a part of the stipulation.

(Discussion off the record.)

TRIAL EXAMINER WEBB: Are there any objections to these exhibits that have been offered?

MR. DENMAN: None. They have been agreed upon.
TRIAL EXAMINER WEBB: They are admitted.

(Thereupon the documents above referred to were marked as "Board's Exhibit No. 3" for identification and received in evidence.)

TRIAL EXAMINER WEBB: Now, we will go off the record.

(Discussion off the record.)

15 TRIAL EXAMINER WEBB: Proceed, Mr. Wells.

MR. WELLS: We would like to call Mr. Huntress, please.

FRANK G. HUNTRESS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Wells) You are Frank G. Huntress, Sr.?

A Not Senior, Just Frank G. Huntress.

Q Are you the Mr. Huntress referred to in various of the exhibits before the Examiner as Mr. Huntress, Sr.?

A I am.

MR. WELLS: May we so stipulate, Mr. Denham?

MR. DENHAM: Yes. He was the president of the Express Publishing Company.

MR. WELLS: And president of the Express Publishing Company, the respondent.

THE WITNESS: Yes, sir.

Q (By Mr. Wells) Your papers, the Express and the News are members of the Associated Press?

A They are.

Q Can you just explain to the Examiner what type of arrangement you have with the Associated Press in regard to furnishing that organization with stories of news events happening in this locality?

A We contribute as a member any news of importance to the reporter of the Associated Press, which each member does.

Q Do you send your own reporters out particularly on stories for the AP or do you just forward copies of stories which they write to the AP office?

A We just take whatever our reporters bring in.

Q And give copies of it to the AP office which is in your building?

A Whenever they want it, yes.

Q On occasion, does the AP inform you that they want more information as to a particular story and ask you to get it for them?

A Well, they might ask the reporter that is assigned to him by the Associated Press.

TRIAL EXAMINER WEBB: I would like for the record to show that when you say "AP" you are referring to the Associated Press.

THE WITNESS: Well, that is understood, Mr. Examiner.

TRIAL EXAMINER WEBB: Let the record show that.

Q (By Mr. Wells) The Associated Press does not have any reporter in the City of San Antonio, does it?

A I don't believe they have. I think their reporters on each newspaper that is a member of the Association reports the news.

Q And then if the Associated Press wants further detail as to a story occurring in this area, the Associated Press will get in touch with you as a member paper and ask you to furnish more particular detail as to the story, is that correct?

A They do that and we furnish it.

TRIAL EXAMINER WEBB: Where would that request come from? What office of the Associated Press?

A It would come probably from the Texas Bureau at Dallas. They are the ones that distribute all the news over the state.

TRIAL EXAMINER WEBB: They collect it in Dallas?

A Yes, sir.

TRIAL EXAMINER WEBB: And it goes to their New York office or other offices?

A Well, it might go to Kansas City or Chicago.

TRIAL EXAMINER WEBB: For distribution?

A Yes, sir.

Q (By Mr. Wells) But a request for more detail might come through Dallas or New York?

A Usually it comes from Dallas. I don't know if it ever comes from any other place.

Q What arrangement does your paper make to pay the Associated Press for news items which it delivers to you?

A Well, the Associated Press—each newspaper is a member and that is a mutual concern, the Associated Press, a nonprofitable association, assesses the members according to the service that they give in that locality.

Q And the Express Publishing Company is a member of the AP?

A Is a member of the Associated Press and so is the Evening News a member of the Associated Press.

Q And the particular amount that you pay to the Associated Press for news delivered to you might vary from week to week or month to month?

A No, it doesn't. They assess so much a week, unless they have extra wires, and if they do they notify you in advance.

Q The Associataed Press furnishes you with news and stories from all over the world?

A Through their Dallas office, yes, sir. Now, the way the Associated Press does, they dispatch their reports over the wire to their employee in charge here at our office through the wires of Dallas, you know. Sometimes it may come from Kansas City—I don't know—but usually they do come from Texas.

TRIAL EXAMINER WEBB: Well, just to take a concrete example, could you give us a brief idea of how you are getting your war news, for instance, from Germany and Czechoslovakia?

A Well, that I couldn't tell. It comes over the printer in our office and taken in charge by one of the employees

of the Associated Press and then handed to our news department.

MR. DENMAN: The stipulation describes that process in detail.

19 TRIAL EXAMINER WEBB: Sir?

MR. DENMAN: The stipulation describes that process in detail.

TRIAL EXAMINER WEBB: Oh, it does. I haven't read the stipulation carefully.

MR. DENMAN: Yes, it does.

Q (By Mr. Wells) Now, how are you compensated by the Associated Press for the news items which you furnish to it?

A We are not compensated at all.

Q That is just a duty which you owe to them pursuant to your membership in the Associated Press?

A That is right.

Q Does the same arrangement of paying as to the United Press? Are you a member of that organization?

A No, we are not a member of the United Press.

Q How do you obtain your news from the United Press?

A Well, they come over the wire to my printer—you know what a printer is? A Morris printer—and then delivered to the news department.

Q Where is the United Press office here in San Antonio?

A I think at Dallas. They had a San Antonio office but they disbanded it a few weeks ago.

Q Then you have a direct wire from the Dallas UP office to your publication office here?

A Yes, sir. I am not sure of that but I think that is the way comes over.

Q And the UP also reports to you.

MR. DENMAN: May I interrupt for one minute. We have a stipulation covering that point in there. Mr. Huntress' answer is somewhat ambiguous and Mr. Huntress' answer also somewhat conflicts with the stipulation. Now we have agreed that the stipulation recites the facts and I don't want Mr. Huntress' answer to affect the stipulation in any way.

MR. WELLS: I will be glad to strike Mr. Huntress' answer.

Q (By Mr. Wells) The UP also furnishes you news of happenings all over the world?

A They do over the lease wire to us.

Q Do you furnish any news items to the United Press?

A We do not.

Q What arrangement do you have for compensating the United Press for news which it gives to you?

A We pay them so much assessment each week; whatever they stipulate.

Q Is that paid for on a space rate basis?

A No, that is paid on a contract basis.

Q Do you have at hand the approximate amount that you paid to the United Press each week for their news service?

A No. Probably Mr. Hall could give you that. I don't keep those details.

Q That payment is made to the New York office of the United Press?

A I believe it is.

Q Do you know what your assessment to the Associated Press is?

A No, I do not.

Q Mr. Hall would have that information?

A Yes, you can get that information from him.

Q Your company has a contract with the Typographical Union, is that Correct, Mr. Huntress?

A Yes.

Q Do you have with you a copy of that contract?

A I think my attorney has that.

MR. DENMAN: We tender it.

MR. WELLS: May we have just a minute please, Mr. Examiner?

TRIAL EXAMINER WEBB: Yes.

(A short recess was taken.)

TRIAL EXAMINER WEBB: As I understand it, we are dealing now with the Express Publishing Company and we are dealing with both the newspapers that this respondent publishes as one unit?

MR. WELLS: That is correct. As a matter of fact, we have agreed in the stipulation, Mr. Examiner, that the unit consists of the editorial employees not only of the Express but of the News, the two together.

22 TRIAL EXAMINER WEBB: In other words, we are dealing with both these newspapers as one unit?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: And they are both owned and operated by the respondent, The Express Publishing Company?

MR. DENMAN: That is right.

TRIAL EXAMINER WEBB: And the ownership, I take it, is a hundred per cent in both cases?

MR. DENMAN: That is right.

Q (By Mr. Wells) Mr. Huntress, is the document which I hand you the original of the contract which you now have in effect with the San Antonio Typographical Union No. 172?

A Yes, sir?

MR. WELLS: Mr. Examiner, we offer in evidence that portion of the contract which the witness has identified appearing on page 4, as the pages are numbered, the portion headed "Section 2," and we offer only that portion of the contract.

TRIAL EXAMINER WEBB: Is there much of it?

MR. WELLS: No, sir, it is just a short portion.

TRIAL EXAMINER WEBB: You may read it into the record, if you so desire.

MR. DENMAN: We object to the introduction of it. We have no objections on the basis of it having been properly proved up. We admit execution of the con-
23 tract, but we object to its admission on the ground that it is irrelevant to this proceeding. It is a contract between the Express Publishing Company and another union; dealing with another department wholly separate from this one, and we feel that the only issue upon which counsel could be expected to offer it is to use it as an argument to the effect that provisions that the respondent would agree to in that contract would be reasonable for it to make with this department, and we think that is leading the case astray into collateral issues because then we would have to determine what the incentives to go into that contract with another department were, and what was given by the union in return for the stipulations that were made in that conract, and we would open a vast field of inquiry as to the reason for this or that negotiation and as to whether it was reasonable in that case and we feel that that would be an injustice to the parties and would lead to an unnecessary incumbering of the record as to the nature of that contract; and if our foregoing objection is overruled, then we further object that not just part of the contract be offered, because it would be unintelligible by itself, but the entire contract should go in, because from that lone could it be determined as to whether or not it was more reasonable or less reasonable or more onerous or less onerous than the one offered by the Guild in this particular instance.

MR. WELLS: Might I make a statement, Mr.
24 Examiner, to the effect that we believe the particular paragraph referred to is relevant. It is

what is known generally as a closed shop provision. Now, in the negotiations which are already in evidence as a part of the stipulation, the respondent stated that it was unwilling to enter into a closed shop contract with the Guild and stated as a reason for its unwillingness the fact that a closed shop contract was illegal and was in violation of the National Labor Relations Act. Now, as going to respondent's good faith in asserting that reason for its unwillingness, it appears to us that it is relevant to show that the same respondent has a contract with another group of its employees containing a closed shop provision.

MR. DENMAN: The record will show or the stipulation will show that the respondent did not state that a closed shop would be in violation of the Wagner Act. It said that it was its belief that a stipulation in the proposed contract which the Guild proposed would be a violation of the Wagner Act in that the stipulation required the respondent to require every employee it had to join the Guild by a certain date and that it conceived that to be a violation of the Act and there is no such similar stipulation in this contract.

Furthermore, we think it would not be relevant, if the respondent contended that a certain thing would be a violation of the law and for that reason it could not enter into it, to show that the respondent had violated the law on another occasion. We think if a man is asked to rob a bank and he says: "No, I don't want to do it. That would be a violation of the law," and then say: "I will inquire into the reasonableness of your position to show that you robbed a bank on another occasion", would not be a proper inquiry, because two wrongs do not make a right and the statement made by the respondent as to whether the contract was violative of the Wagner Act or not can be decided by the contract itself and cannot be decided on the basis of whether or not on some occasion the respondent made a contract with somebody else containing certain provisions.

TRIAL EXAMINER WEBB: I think both you gentlemen are right. In this respect I will say that I am perfectly willing to admit testimony with respect to incidents bearing on the labor relations in the respondent's plant even though they may not be closedly related to the issues in the case. In other words, sometimes we let in testimony in regard to labor relations in a plant that occurred prior to the passage of the Wagner Act to simply give us a background or to throw some light on the situation. Actually the respondent could not be held liable for some alleged act or some act committed prior to the passage of the Act, but we have admitted testimony in regard to those things, as I say, to give us some idea of the background on the labor relations in the plant.

Now, with reference to this agreement which
26 respondent has with the San Antonio Typographical Union No. 172, which is an entirely different unit from the one which we are considering in this hearing, I am quite willing to admit testimony to the effect that there is such a unit in the plant and that there is such a union in the plant also and that the respondent is under contract with the union which is the representative of these particular employees, which is a different unit from the one that we are considering entirely, and also to the effect that the contract calls for a closed shop, but so far as the details of the contract and all the provisions of the contract are concerned, I don't think it is relevant at all to this case for the simple reason, as you have already stated, we do not know the circumstances surrounding the execution of this contract and we won't undertake to go into them because it is not necessary and it is not raised. The complaint in this case raises no such issue. I mean that this is an entirely different group of employees, an entirely different union. Is that true?

MR. DENMAN: That is so.

TRIAL EXAMINER WEBB: As I say, the general ef-

fect that the respondent is under a contract with another union covering other employees in the plant is relevant. That is all right. That is relevant. But I don't think it is relevant to go into details of the contract. However, counsel has offered a certain portion of this contract in
27 evidence. I am prepared to admit that paragraph of the contract known as Section 2, for the purpose of showing that, as I have stated, the respondent is under contract with another union in regard to another unit of employees in the plant and for that purpose only.

MR. DENMAN: Note our exception.

TRIAL EXAMINER WEBB: The objection is overruled and you may read this section into the record.

MR. WELLS: "Witnesseth: That from and after the first day of December, 1928, and until the thirty-first day of July, 1933, and continuing thereafter until a new agreement shall have been made, party of the first part binds itself to the employment of its composing room of members of the International Typographical Union. This shall include foremen, floormen, makeup men, proof readers, machinists, operators of type and line setting and casting machines (not including pot feeders, wipers of said machines, or boys employed to proof galleys).

(Thereupon the excerpt referred to was marked as "Board's Exhibit No. 4", for identification and received in evidence.)

TRIAL EXAMINER WEBB: I think you could have gotten that same information by simply asking the witness the question, "Is there another union in there and what class of employees are covered and have you got a contract with them?"

MR. WELLS: Mr. Examiner, I wanted to go to
28 the best evidence.

TRIAL EXAMINER WEBB: All right. Proceed.

Q (By Mr. Wells) Mr. Huntress, the contract with the Typographical Union was first signed of November, 1928, is that correct?

A That is right.

Q And from time to time it has been renewed or changes have been made?

A That was renewed and you have it there, the date it was renewed. It was not renewed from time to time. If you will hand it to me I will show you.

Q Well, if you will, just state to the Examiner when it was renewed after it was first executed.

A That was renewed on July 7, 1937, on all the stipulations, wages and other things.

Q The closed shop agreement was renewed on July 7, 1937?

A The entire contract was renewed, yes, sir.

TRIAL EXAMINER WEBB: And it is in effect now?

Q (By Mr. Wells) Mr. Huntress, in this next question, I have reference to your present attitude; that is, as of this time: Do you have any character or counter proposal to offer to the Newspaper Guild in regard to any question of wages or hours or working conditions?

MR. DENMAN: Are you through with the question?

A It is in effect now, yes, sir.

29 MR. WELLS: Yes, sir.

MR. DENMAN: We object. This is not the method in which the Act requires a party to carry on negotiations and a party could not be expected to sit on the witness stand and dictate proposals that he would agree to. The party would be entitled to draw those up with the aid of counsel and with his advisers and it would not be fair to expect the party to dictate orally contracts or to be required to state offers of contracts from the witness stand. It would be beyond the capacity of anybody to expect him to explain the terms of a lengthy agreement from the witness stand; beyond the capacity and ability of a lawyer, much less that of a layman.

MR. WELLS: Mr. Examiner, our charge is this: The charge of failure to bargain collectively is a continuing charge and failure to bargain as of May, June and July is failure of, up to and including October 6, 1938. Now, the respondent's position on several points is more or less clearly indicated in the correspondence and the minutes of meetings all of which are included in the stipulation. I believe that you, Mr. Examiner, and the Board should be apprised of the respondent's position as of this date and for that reason we are asking the question.

MR. DENMAN: If the question had been "Are you willing to continue negotiations" I wouldn't have any objections to it, but to ask him what counter proposition he would make and expect him to sit on the witness stand and try to state a counter proposition to a contract covering many pages, I don't think would be reasonable, relevant or proper.

TRIAL EXAMINER WEBB: Will you read that question, please?

(The last question was read.)

TRIAL EXAMINER WEBB: Well, if he answers that in the affirmative are you going to ask him, "What are they?"

MR. WELLS: Yes, sir.

TRIAL EXAMINER WEBB: I am inclined to sustain the objection to that part of the question. I see no objection to asking the witness, as stated by respondent's attorney, if he is now in a position to or would he be willing to bargain with the union or negotiate with the union with respect to wages and hours and other conditions of employment.

MR. WELLS: Mr. Examiner, my difficulty with that question is just this; that we are asking the witness to state a conclusion. He may very well state, "Yes, I am willing to negotiate", and his idea of what negotiating is might not be the same idea that you or I might have or that the Board might have. I do not think the Board ought to be apprised of what his position is and of what he is willing to do. They may say that what he is willing to do constitutes bargaining. I just want the Board to have the facts.

TRIAL EXAMINER WEBB: I don't see what assistance that would give us in determining the issues in this case if the witness were to answer it that he
31 would be prepared to offer thus and so and go into detail as to what he is prepared to do. In that case we would be bargaining here in this hearing; using this hearing as a means of collective bargaining or negotiating. We are not here for that purpose. We are here to determine the issues raised by this complaint.

MR. WELLS: Mr. Examiner, we are here though, aren't we—pardon me for asking the question—as I understand it, to determine what the parties' acts have been and what their attitude now is in reference to a continuing charge of failure to bargain? It is not just a charge of failure to bargain back in April. It is a charge continuing up to this very minute.

TRIAL EXAMINER WEBB: Are we concerned with what the respondent is going to do from now on or are we

concerned with what the respondent is alleged to have already done?

MR. WELLS: I think we are concerned with what the respondent has done up to this very minute and I think if the respondent is ready to bargain tomorrow, even though you have heard the case, the question is moot.

TRIAL EXAMINER WEBB: Well, we will see how far we will go in this. Objection overruled, and Mr. Huntress, answer the question.

MR. DENMAN: Note our exception.

TRIAL EXAMINER WEBB: Read the question, please, Mr. Reporter, but understand, we will not go too much into detail with respect to what the respondent now may do or what he may
32 offer, unless you can show me that you connect it up with the issues of this case.

Read the question, please.

(The last question read.)

A Don't you think that is a matter of trying to bargain here that should be taken up by the negotiators themselves?

TRIAL EXAMINER WEBB: Now, Mr. Huntress, do you understand the question? If you do understand it, answer it. If you don't understand it, we will have him clarify it.

A All right. I would like to have it clarified.

TRIAL EXAMINER WEBB: Will you reframe your question or explain it to the witness, Mr. Wells?

Q (By Mr. Wells) Are you now willing to offer, Mr. Huntress, any particular provision of an agreement which

you are now willing to enter into with the Newspaper Guild?

A That is about the same question you asked before.

TRIAL EXAMINER WEBB: You understand the question?

A Well, I understand the question that you want to negotiate with me now. I am not negotiating at this time. I thought we were here on a trial and that we were charged with certain things and that those particulars would be brought out here.

MR. WELLS: Mr. Examiner, as I understand your ruling, it was that if the witness understood the question he would do his best to answer. We would like to requeust that now.

TRIAL EXAMINER WEBB: Well, he is answering it, as I understand it. As I understand it, he has
33 answered the question. If he has not answered it sufficiently, you may continue to continue to question him. He is your witness.

Q (By Mr. Wells) Mr. Huntress, other than the statement you have just made, do you have any proposition of any kind which you will now state that you would be willing to agree to with the Newspaper Guild; that is, a proposition in regard to wages, hours or working conditions?

A I still feel that that question is out of order. That is not what you brought us up here for.

Q Now, Mr. Huntress, in direct answer to the question, if you please, do you have any proposition on any point in regard to wages or hours or working conditions with which you would now be willing to agree?

A Well, the Guild has never asked me that. Therefore, I couldn't answer it.

MR. WELLS: Please, Mr. Examiner, I will ask the witness to be responsive to the question.

TRIAL EXAMINER WEBB: Well, now, I would like to make this observation: As I understand, if you are asking this witness now whether he is prepared to open up this question of negotiation and make a certain proposal looking toward a settlement of the issues of this case, is that true?

MR. WELLS: No, sir.

TRIAL EXAMINER WEBB: If that be true, I would be willing to adjourn for a sufficient length of time for the Union and the respondent to go into the matter, if you think that you are going to come to a settlement of the case.

34

MR. WELLS: We would be happy, and I am sure the other parties would be, if the matter could be adjusted. However, I dont' have in mind the adjustment of the matter in the question I just asked. I had in mind ascertaining what the respondent's present position is in regard to bargaining with the Union. As I understand, the failure to bargain is a continuing charge.

TRIAL EXAMINER WEBB: Why not ask the witness the question: Is the respondent willing now to renew or continue or to take up negotiations with the Union?

MR. WELLS: Mr. Examiner, the documents which are now before you indicate that the respondent has so stated to the Regional Director for the Labor Board and, I believe to the Union too. I am not sure of that. What about that, Mr. Denman?

MR. DENMAN: That is correct.

MR. WELLS: However, the meat of the issue before the Examiner is whether or not all this talk and all this writing that has gone on does constitute bargaining.

Now the Board's contention in the issuance of the complaint is that what the respondent has done does not constitute bargaining and that his mere statement that "I will continue doing what I have been doing", won't settle the issue. For that reason we would like to know what his attitude is specifically as to particular points in the matter of a counter proposal.

MR. DENMAN: We feel that this is not an attempt to try the respondent on the charges made but on something new; as to whether today they are willing to negotiate. We concede that the law is that the obligation to continue to negotiate is a continuing one, but if the Board feels that today they are not willing to negotiate, there should be a charge brught that they are not willing to negotiate today and then try that issue.

As counsel said, the respondent, as shown by the record, has in writing informed both Dr. Elliott and the Guild that he is willing to continue negotiating, however, counsel is not asking that. He says, "What proposition are you willing to make?" The effect of that is this: Here is a long contract and to put a witness on the stand and ask him, "What proposition are you willing to make," when we all know that a proposition such as that must be handled with care, with attorneys and advisers on hand, is not fair. I repeat it is not fair to put a witness on the stand and ask him what kind of contract or proposal he is willing to make.

TRIAL EXAMINER WEBB: I am not prepared to change this hearing into a conference for the purpose of negotiating a settlement of this case or an agreement between the Union and Respondent. Now, if that is contemplated, as I say, I think it would be appropriate to adjourn the hearing for the purpose of having a conference between the Board and the respondent looking toward a settlement and

then, if a settlement is reached, it can be dealt with in this hearing, but if that is not the purpose, then I am not disposed to compel this witness to sit here on the witness stand and state what he would be prepared to do from now on in regard to entering into a contract with the union in respect to wages, hours and conditions of employment. I don't see how that would assist us in determining the issues of this case. I can't see that.

MR. WELLS: Just so I may understand you, Mr. Examiner; I had understood that the question was first permitted and that you had instructed the witness to answer the question. Now, as a further basis for the question we refer to paragraph 6 of the complaint, which is in evidence, half-way down the paragraph, "On said dates and at all times thereafter respondent did refuse, has refused, and does now refuse to bargain collectively with said San Antonio Newspaper Guild as the exclusive representative . . .. . " and so forth.

There is a charge of failure to bargain as of right now. Now the respondent comes before the Examiner and contends that it has expressed a willingness to the Regional Director of the Sixteenth Region of the Board that, "We will continue negotiations with the Board." It tells the Union, "We will be glad to meet with you at any time." But it appears to me that what the Examiner and the Board will be interested in
37 is not a statement of a general conclusion as to what they will do, but with a minute observation as to what has gone on and what the attitude of the respondent is right now so that the Board may determine and tell the parties whether or not what has gone on has been bargaining.

TRIAL EXAMINER WEBB: As I stated, I am prepared to let the witness answer the question as to whether or not the respondent was inclined to bargain with the Union. Even then I don't consider that as relevant. I don't

see how the answer to that question would help us solve the issues in this case. As I understand it from the complaint here, the respondent is charged with an alleged violation of Section 8 (1) and 8 (5) of the Act. Now, whatever respondent may do in the future is another proposition entirely. It is what respondent already has done and, as I stated, if the witness answers that he is prepared to negotiate with the Union, then you will ask him what is his proposition. Then you turn this hearing into a negotiating conference and I sustain the objection to that.

We will proceed.

MR. WELLS: May we have that information in the record for the purpose of a bill, Mr. Examiner? I don't like to be contentious about the matter, but I do think the Board will be quite interested in it. I will try to be just as brief as I possibly can.

TRIAL EXAMINER WEBB: As I say, I will
38 overrule the objection to the question to the witness as to whether he is prepared to negotiate or wants to or will ngotiate with the Union.

MR. LENMAN: We have no objection that question.

TRIAL EXAMINER WEBB: But I am not prepared to go into detail as to what offer the respondent is now willing to make to the Union in regard to wages and hours and working conditions. As I see it, that properly belongs to a bargaining conference and not to this hearing. It would burden this hearing.

If, as I say, the respondent and the complainants want to get together and settle this case, if they come to an agreement, we are perfectly willing to settle the case on an agreed state of facts. At any stage of the proceeding it can be settled, but if this is merely asking the witness to give a statement of what he is willing to offer the Union

just to find out what the respondent is now willing to do, I sustain the objection to that.

MR. WELLS: Mr. Examiner, I haven't probably made myself clear.

TRIAL EXAMINER WEBB: I don't understand you.

MR. WELLS: And I will be glad to state my position for the record again, or off the record if you desire.

TRIAL EXAMINER WEBB: Let it go on the record.

MR. WELLS: It is just that respondent stands charged as of this minute with the charge of failure to
39 bargain with the Union. What respondent's attitude is as to bargaining and not as to the conclusion of bargaining but as to the actual steps which respondent will take in bargaining, is therefore material to the charge before the Examiner. For the sole purpose of showing what respondent's attitude is now we ask the question, and not attempting in any way to turn this session into a bargaining conference. It is merely so the Board may have the facts as to what the respondent's attitude is.

TRIAL EXAMINER WEBB: I think that could be gotten in one question. If you want to know the respondent's attitude with respect to bargaining, ask the question, Are you prepared to enter into negotiations with respect to collective bargaining?

MR. WELLS: Mr. Examiner, I have no doubt as to what respondent's answer will be. It will be the same answer that appears in Exhibit EE, which is before the examiner, "We will be glad to meet with the Guild and negotiate with the Guild," but as I see it, the issue before the Examiner is whether or not all these letters and all these conferences constitute bargaining.

TRIAL EXAMINER WEBB: Exactly.

MR. WELLS: Now, the Board in its complaint contends that all these actions do not constitute bargaining.

TRIAL EXAMINER WEBB: Yes. Well, now, how are you going solve that problem? By asking the witness that question of what he is willing to do in the future? If he says, "Yes," he is willing to bargain, then you will say, "What are you willing to do?" Then, you will make his say what he is willing to do. Now, are you going to put the Guild on the stand and ask them, "Are you willing to accept this? You have heard what the witness said. Are you willing to accept it? If not, then, what will you accept?"

Then you would turn this hearing into a bargaining conference, which is not the purpose of this hearing at all. If you are doing that as a means of arriving at a settlement of the case, as I say, I am perfectly willing to adjourn and let you hold a conference and ask the respondent, "What are you willing to do?" And, then, let him outline in detail what he is willing to do. Then, if the Union is willng to accept it, then, you would have the basis of settlement, but I don't think it is admissible to go into that with the witness from the witness sand.

MR. WELLS: We certainly have no idea of turning the hearing into a bargaining conference. I don't think it is material to ask the Union what they will do, because they are not charged with failure to bargain.

I am in a sense arguing the case before the Examiner and I don't mean to take advantage of you by doing so, Mr. Denman.

MR. DENMAN: Yes.

41 MR. WELLS: That the Guild came to the respondent with what they called the model contract, following which there was a series of correspondence and four meetings at which quite a bit of talk occurred, and the Guild filed charges that the respondent was failing to bargaining, although it was meeting with the Guild.

TRIAL EXAMINER WEBB: You mean that it failed to bargain in good faith?

MR. WELLS: Yes.

TRIAL EXAMINER WEBB: They evidently bargained. That appears from the fact that they had these conferences. Now, you are predicating this case on the theory that they did not bargain in good faith and to that extent they have violated this provision of the Act.

MR. WELLS: Yes, sir. The quesion then, before the Examiner is whether or not what has happened and what is now happening, since this is a continuing charge, constitutes a violation of Section 8 (5) of the Act. On numerous occasions the Union requested the respondent to present some character of counter proposal. I have read through the correspondence and the transcripts of the meetings and have been unable to find such counter proposal. Now, I would like the Board to know whether or not at this time this respondent, who is charged with a continuing refusal to bargain, will offer a counter proposal?

42 TRIAL EXAMINER WEBB: Let me add at this point that the statements made by counsel are not evidence in this hearing.

MR. WELLS: We certainly meant them not to be.

TRIAL EXAMINER WEBB: Certainly not.

MR. DENMAN: I think counsel is under a misapprehension as to what occurred. It is all set out in the stipulation. The Union presented a contract. Mr. Huntress at the meeting read a lengthy statement giving his reasons, going down the contract from item to item why he did not think it was acceptable. The union representatives said, upon being addressed as to whether they thought the contract submitted was reasonable, that they didn't think it was warranted or justfied at the present time; that is, the contract that was submitted; and Mr. Huntress then stated: "Well, if you think so, have you any other contract to submit? You are at liberty to submit one if you want to and I will give it careful consideration."

They said, "Do we have to submit one?"

He said, "No, you don't have to submit one but if you do I will give it careful consideration."

At one of the first conferences one of the members asked Mr. Huntress if he had a counter proposal to offer and Mr. Huntress then said that in respect to the statements by the representatives that they didn't think the terms of the proposed contract reasonable he
43 didn't think he had to submit one and they withdrew to talk the matter over.

TRIAL EXAMINER WEBB: I think that is all part of the stipulation.

MR. DENMAN: Now to put Mr. Huntress on the stand and ask him now, "What are you willing to submit?" is a task beyond the comprehension of any man.

TRIAL EXAMINER WEBB: I sustain the objection. Proceed.

MR. WELLS: May we have it for the purposes of our bill of exception just so it may be before the Board?

TRIAL EXAMINER WEBB: Certainly. I will state here now that where an objection is ruled on by the Trial Examiner an exception is noted automatically, whether you note it in the record or not. In other words, your exception is in the record whether you note it or not.

We will proceed with the examination of this witness.

MR. WELLS: We understand we may ask the same question for the purposes of the bill.

TRIAL EXAMINER WEBB: The question has been asked, objection made and sustained by the Trial Examiner; that is, to that part of the question which he is asked to go into detail as to what he is prepared to offer on behalf of the respondent to the Union at the present time.

MR. WELLS: What I mean is, Mr. Examiner, we except to your ruling on the question and then move that the same question be submitted to the witness for the purpose of a bill.

44 TRIAL EXAMINER WEBB: All right.

MR. WELLS: In other words so that his answer may appear in the record so that if the Board agrees with us the Board may have the answer before it.

TRIAL EXAMINER WEBB: That may be done, certainly. Go ahead.

MR. WELLS: Will you read the question?

(The question was read as follows:

"Question: Mr. Huntress, other than the statement you have just made, do you have any proposition of any kind which you will now state that you would be willing to agree to with the Newspaper Guild; that is, a proposal in regard to wages, hours, or working conditions?")

A Haven't I answered that?

Q (By Mr. Wells) I want you to answer that question, please, sir.

A. I am going to make the statement that we never refused to bargain collectively with the Guild. The Guild submitted a contract to us, a proposed contract to us—

Q. I am afraid you don't understand the question. The question was whether or not at the present time you have any kind of counter proposal in regard to hours, wages, or working conditions which you are now willing to offer to the Guild?

A. That is the matter that I referred to and I never refused to submit a counter proposition and furthermore, I think—

45 Q I am just asking you with reference to the present time.

TRIAL EXAMINER WEBB: Let him finish his answer. Finish your answer, Mr. Huntress.

A That is all.

Q (By Mr. Wells) I am just asking you whether or not at the present time you have any counter proposition?

A How do I know, if we were to submit a counter proposition, that it would be accepted?

Q Well, I will ask you just to answer the question, please. At the present time do you have any counter proposition?

A I believe I have answered it.

Q Other than the answer you have given us, you have no counter proposition to offer to the Guild?

A You are compelling me here to say something that really I was not brought up here for. I was brought here with the charge that I refused to bargain faithfully with the Guild. I deny that because we did bargain faithfully and it was them that refused to go further in the negotiations.

Q Pardon me, just a minute, Mr. Huntress.

I will move to strike the witness' statement as not responsive and ask that the question put to him be reasked and he be required to answer it.

TRIAL EXAMINER WEBB: Motion denied. Proceed

MR. WELLS: Will you read the question, please, Mr. Reporter.

46 (The last question and answer read.)

MR. WELLS: Now, I believe that can be answered "yes" or "no".

A No, not at the present time.

Q (By Mr. Wells) Have you ever had any counter proposition which you have offered to the Guild?

MR. DENMAN: We object to that as infringing on our stipulation. The stipulation contains a full statement of what occurred with reference to all those circumstances and we contend that some of those were counter proposals and they contend that they were not.

MR. WELLS: I will limit the question.

MR. DENMAN: That is for the Examiner to determine, whether or not that is bargaining, and not for the witness.

MR. WELLS: I would like to insist upon the question, because the respondent's present intent is certainly material on the issue of good faith and whether or not he intended something which is already before the Examiner to be a counter proposal, I think should be made known to the Examiner and the Board.

TRIAL EXAMINER WEBB: Well, as I understand it, the parties at interest have entered into a stipulation with respect to what transpired at these negotiations and these meetings. You have stenographic reports here, you have letters, you have voluminous documents covering what is purported to have transpired
47 at these conferences. Is that true?

MR. DENMAN: That is correct.

TRIAL EXAMINER WEBB: And as I understand it you were going to submit those in view of oral testimony as to what occurred at those meetings, is that true?

MR. WELLS: Yes, sir.

TRIAL EXAMINER WEBB: Objection sustained. proceed.

MR. WELLS: We automatically have our exceptions, haven't we?

TRIAL EXAMINER WEBB: Certainly.

MR. WELLS: That is all I have.

MR. DENMAN: We would like to offer the part of the Typographical Union contract that was not offered by the Board.

MR. WELLS: We will object to it as immaterial.

TRIAL EXAMINER WEBB: You want to offer the entire contract?

MR. DENMAN: All that he didn't offer. I dont' want to waive my objections to the part that he offered.

TRIAL EXAMINER WEBB: Objection overruled. admitted.

(Thereupon the document above referred to was marked as "'Respondent's Exhibit No. 1" for identification, and was received in evidence.)

CROSS EXAMINATION

Q (By Mr. Denman) Mr. Huntress, what difference if you know, is there as to the type of work done
48 by the employees covered by the Typographical Union contract and the type of work done by the people in the editorial department as bearing on the question of whether you would be willing to have the Union control the membership of your employees in one instance or the other?

A There is a big difference between the mechanical—

MR. WELLS: Pardon me, just a minute, Mr. Huntress.

To which we object, Mr. Examiner, for the reason that it is immaterial and for this reason; as we understood the negotiations, respondent stated that it would not enter into a closed shop contract with the Guild because such a contract was in violation of the Act. Now, on the issue of good faith in its contention that a closed shop contract was in violation of the Act, we offered a portion of the Typographical Union's contract, and that was the only purpose for which we offered a portion of the Typo-

graphical Union's contract. It appears to us then not material.

TRIAL EXAMINER WEBB: You have opened the door. Objection overruled. You may answer.

MR. WELLS: May I make this further statement as a reason for objecting? The purpose of the question goes to the question of good faith. Now, it certainly might be material if respondent had raised at the time of bargaining the question or pointed out that a printer does something and a reporter does something else, and that there are different conditions
49 obtaining as to each, but the only issue which the respondent raised then was that this particular portion of the contract was violative of the law, and therefore, "We won't enter into it." They didn't give the reason that the conditions of employment of the two groups were different.

MR. DENMAN: Counsel is in error.

TRIAL EXAMINER WEBB: I will repeat that I was prepared to admit testimony to the effect that there was another Union in the plant covering another set of employees and that the respondent did have a contract with this other Union and that it was a closed shop contract, but to go into the details of that agreement and as to why it was entered into and for what purpose and all that, I don't think it is relevant to the issues of this case. I can see the point raised by the Board that perhaps if respondent entered into a closed shop agreement with one union why it could enter into a closed shop agreement with another union, but I don't think that will assist us very materially in deciding that point, because we are dealing with an entirely different union, we are dealing with an entirely different unit in the plant, men engaged in different kind of work, as I understand it.

We will proceed.

MR. DENMAN: If the Examiner, please, I don't want to go into great detail in reference to it, but I just wanted to ask the one question. If, as counsel says, he is going to the question of good faith, in the written objections shown in the stipulation there were two grounds on which the respondent objected to the closed shop. One was that the particular form in which they put it—not that any closed shop was violative but that the particular closed shop agreement submitted would be violative to the Wagner Act and furthermore that it would be an unreasonable restriction on the respondent in respect to that type of employee; that is, as to the employees of the editorial department.

When they go into the question of good faith, they say, "If you enter into a closed shop agreement in that department you must not refuse it in this department?" I want to show the difference between the two departments.

TRIAL EXAMINER WEBB: I take it that all appears in your stipulation.

MR. DENMAN: But it doesn't appear; that is the difference between the two departments doesn't appear.

TRIAL EXAMINER WEBB: I admitted a portion of this contract with the Typographical Union, is that right?

MR. DENMAN: Yes.

TRIAL EXAMINER WEBB: And I have also admitted the entire contract, but I think in both instances it is immaterial, because you have testimony in the record that there was another union in there, that there was another appropriate unit and that there was a contract, and that the contract called for a closed shop. Now, other than that I see no relevancy at all to

the matter, although I have admitted a portion of the agreement and now have admitted the entire agreement. That is as far as we will go in that.

Please proceed.

MR. DENMAN: That is all we have.

TRIAL EXAMINER WEBB: Just one question I would like to ask you.

I understand, Mr. Huntress, that respondent owns and operates two daily newspapers?

A The Express Publishing Company.

TRIAL EXAMINER WEBB: That you are in the general newspaper business? I mean the publication, distribution and sale of your newspapers doesn't vary in any material aspect from the publication and sale of any other daily newspaper in the country, is that true?

A Well, the Express Publishing Company, as you know, publishes two newspapers.

TRIAL EXAMINER WEBB: Yes, sir.

A And it is distributed mostly—in fact, very limited outside of Texas. We confine the circulation to the State of Texas; principally to San Antonio.

TRIAL EXAMINER WEBB: I understand that, but I say, you are engaged in the publication of two daily newspapers? That is the respondent's business?

52 A Yes, sir.

TRIAL EXAMINER WEBB: And what goes with it; advertising and matter of that kind?

A Yes, sir.

TRIAL EXAMINER WEBB: That is all.

(Witness excused.)

MR. RAGSDALE: Could the Guild have its notice in the record that it joins the attorney for the Board in the exceptions to the ruling out of the questions that were asked Mr. Huntress?

TRIAL EXAMINER WEBB: Certainly.

MR. WELLS: May I have two or three minutes' recess, and I think I will be through.

TRIAL EXAMINER WEBB: Yes, we will have a five minute recess, or ten, whichever is necessary.

MR. WELLS: Five will be plenty.

TRIAL EXAMINER WEBB: All right. A five minute recess.

(Thereupon a short recess was taken.)

THORNTON HALL

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Wells) You are Thornton Hall?

A That is correct.

Q What is your official connection with the Express Publishing Company?

53 A I am secretary of the company.

Q Are you acquainted with approximately what assessment the respondent pays to the Associated Press for its membership in that organization?

A Approximately $700.00 a week for both papers.

Q What does respondent pay to the United Press for the services accorded by the United Press to the respondent?

A Approximately $200.00 a week.

Q As secretary of the company, are you generally familiar with the working conditions of employees in the editorial department?

A In a general way, yes.

Q Will you just state to the Examiner what rule, if any, the respondent has practiced in regard to seniority among the employees of the editorial departments; that is, what weight respondent gives to the seniority which a particular employee has when considering lay-offs or promotions?

A Well, there has been very few changes made since I have been there in the editorial department.

Q Do you know of any instances when changes have been made when seniority has been given any weight?

A In promotions, you mean?

A Well, in any changes of any kind.

A I do in so far as retirement is concerned. We keep them on the pay roll even if they reach this age.

54 Q Any other happening in which seniority is given any weight? What I am trying to get at, Mr. Hall, is just your statement for the record of what seniority rule, if any, respondent has practiced in its editorial department?

A Well, no. I would say importance is given to the conduct of the employee and his efficiency rather than seniority.

Q What machinery has been in use as between the employees of the editorial department and the management in regard to the presentation of grievances which the employees might have?

A Through their department heads.

Q That is through the managing editors of each of the papers?

A That is right.

Q And that is through direct contact of the aggrieved employee with the managing editor of the particular paper?

A And then, of course, he has a right to go over the head of the managing editor if he wants to carry it that far.

Q First he sees the managing editor and if satisfaction is not received there, he may come to you or to Mr. Huntress?

A That is correct.

Q And that is what happens in actual practice?

A That is correct.

Q That is the only way you have handled grievances down there prior to this?

A That is the only way we would handle them down there. I don't recall now any grievances such as
55 you speak of. That would be the general practice.

Q Any grievances with respect to wages, hours, or working conditions would be handled that way?

A Yes, sir.

Q Do you have any way of handling severance wages; that is, when an employee severs his relations with the company?

A When we sever their connection?

Q Yes.

A Yes, sir, we do.

Q What is that?

A It varies depending on the conditions of the discharge.

Q Do you have any set rule as to that which you can state to the Examiner?

A We have a general rule of around two weeks' pay. That is not a set rule.

Q Is that given when an employee is discharged for what management considers cause?

A That is right.

Q What provision do you have for sick leave?

TRIAL EXAMINER WEBB: Now, just a moment. There is no 8 (3) charge in this complaint and respondent is not charged here with violating the Act in respect to any lay-offs, or discharges, or discrimination, is it?

MR. WELLS: No, sir. We merely wanted to show the Examiner and the Board what the working con-
56 ditions there were. We thought it might be material on the issue of good faith.

TRIAL EXAMINER WEBB: I don't see the relevancy of going into the matter of sick leave, bonuses, retirement fund, and so forth, because there is certainly nothing in the complaint here alleging any discrimination on the part of the respondent with respect to matters of that kind, is there?

MR. WELLS: Certainly not.

TRIAL EXAMINER WEBB: I don't think it is relevant to go into that because it is a vast field and we can take up a lot of time and it would be a burden on the record. It is very interesting to know what the respondent does with respect to sick leave, retirement, and vacation leave, but it is not relevant.

MR. WELLS: May I say briefly that it is to show what respondent's policy was; various working conditions in respect to wages, hours, sick leave, vacations, the presentation of grievances, and the matter of the practice of any seniority rules. Is it the Examiner's ruling that those matters are immaterial?

TRIAL EXAMINER WEBB: I can't see the relevancy at all in connection with the issues raised in this complaint, unless you can show me what it is. The respondent is certainly not charged with any discrimination with reference to matters of that kind, is he?

57 MR. WELLS: It appears to us, Mr. Examiner, that good faith can be judged only as against the background of the existing conditions in the editorial department of the respondent's papers.

TRIAL EXAMINER WEBB: I still maintain that the issue involved here with reference to this 8 (5) charge is whether or not the respondent failed to bargain in good faith. That is what he is charged with in violation of the Act; in that, he failed to do it.

MR. WELLS: We will not press the point. Note our exception to the ruling.

That is all we have of Mr. Hall.

CROSS EXAMINATION

Q (By Mr. Denman) Mr. Hall, referring to the written statement which the stipulation shows you read to the members of the editorial department, what was the occasion of your reading this statement?

MR. WELLS: Just a minute, please, Mr. Hall.

To which we object, first, because it is not proper cross examination, and while this particular question was not leading, we believe that respondent could make the witness its own witness for such purposes.

MR. DENMAN: We have no objection to the witness being considered as our witness.

TRIAL EXAMINER WEBB: Read the question, please.

(Question read.)

58 MR. WELLS: The further objection, Mr. Examiner, that the intent of the witness or the

mental processes through which he went which caused him to read the statement to his employees is not material. The facts are already agreed to and before the Examiner that the statement as it appears before the Examiner was made and it appears to us that reasons for the statement are immaterial.

TRIAL EXAMINER WEBB: Well, I understood, gentlemen, that you had drawn up a stipulation and submitted various and sundry documents and also stenographic notes of certain meetings and conferences that were alleged to have been held between the union and the respondent in respect to this 8 (5) charge and that you were going to stand on this stipulation. I didn't understand that you were going to put witnesses on the stand now to go in and delve into the details of these meetings.

MR. DENMAN: Your Honor, it was not the intent to do that, but counsel and I agreed to do this: We first attempted to stipulate in reference to Mr. Hall's intention—and the intention is specifically alleged in the petition—and we concluded that it was better to leave that to oral testimony, but counsel reserved the right to make objection to the questions we might ask; not on the ground that it is in the stipulation, but on the ground that it should not be asked at all.

Now, I haven't asked for mental processes. I just asked what was the occasion of it. However, I do intend
59 to follow that with one on the matter of intention.

The complaint said that Mr. Hall read this statement intending to have certain influence, and we feel that the complaint directly puts in issue what his intention was, but I haven't yet come to that queston. I am not asking him what the occasion was of his reading this statement?

TRIAL EXAMINER WEBB: Well, does the testimony in respect to these statements and the reasons for the statements, does all that appear in the documents?

MR. DENMAN: The fact that it was read is in the stipulation.

TRIAL EXAMINER WEBB: I haven't had an opportunity to go through them. It will take me several hours to go through these documents attached to the stipulation.

MR. DENMAN: The fact that it was read is stated in the stipulation, but I am sure counsel will bear me out that we reserved the right to put Mr. Hall on the stand for testimony as to his intention and counsel reserved the right to object to the admissibility of any such testimony, but it is understood that the stipulation did not cover that matter.

TRIAL EXAMINER WEBB: But usually I think it is proper to put a witness on the stand and let him testify to what he knows, to testify to facts, and we can draw our own conclusions as to what he probably meant by it, as to what those facts imply, and not get the conclusion of the witness. I would rather have facts in the record and draw my own conclusions rather than have the conclusion of the witness. However, I don't object to the question. If that is the basis on which you are now questioning him, objection overruled.

MR. DENMAN: The question was what was the occasion of reading this statement?

MR. WELLS: The further objection that the question is ambiguous. I don't know what he means by "occasion". Does he mean what occasioned the witness to do it or what happened when he read it?

TRIAL EXAMINER WEBB: What paragraph of the complaint are you referring to now?

MR. DENMAN: To the end of paragraph 8.

Q (By Mr. Denman) Were there any happenings prior to your reading the statement that led you to read the statement?

MR. WELLS: We object to that as immaterial.

TRIAL EXAMINER WEBB: Well, the complaint does say at the latter part of paragraph 8 of the complaint, "And made further statements well known to respondent intending to have the effect of discharging membership in said San Antonio Newspaper Guild." Now, as I understand it, the stipulation and these documents attached to it covers this incident and the details in connection with the reading of this statement.

MR. DENMAN: It covers simply the fact that it was read. Counsel and I understood, and I am sure
61 counsel will bear me out, that we first undertook to stipulate to those facts leading up to it and he said that if I wanted to offer any evidence I could do so, subject to his right to object to the admissibility of it.

MR. WELLS: That is correct. If I might interrupt, I would like to move to amend paragraph 8 of the complaint, the particular portion which you have just read, deleting the words, "intending to have the effect of discouraging. . ." and substitute therefore "having the effect of discouraging membership in said San Antonio Newspaper Guild".

TRIAL EXAMINER WEBB: Any objejction to that motion?

MR. DENMAN: We have no objection to the amendment.

TRIAL EXAMINER WEBB: The motion is granted.

Now, do you wish to pursue this line of inquiry?

MR. DENMAN: I would then not want to ask him what his intention was, but I would still want to ask if any happenings occurred prior to his reading the statement that caused him to read it and then ask him what those happenings were. If counsel wants me to be definite, I can be more explicit. Of course, I didn't want to lead the witness. Do you want me to be more definite? If you do, I can be more definite.

TRIAL EXAMINER WEBB: I might say that the Trial Examiner is at a disadvantage in this respect, it appears to me, in that we are trying this case more or less on a stipulation and documentary evidence and stenographic notes of meetings that were held and they are so voluminous that it has been impossible for me to even casually glance through them. I have gone through the stipulation with reference to interstate commerce, but with reference to these other documents, it would take me hours to go through them, and now we are asking a witness here something in regard to what occurred at one of these conferences where certain documents were read and that has been objection made to that question by the Board, and, as I say, I am at a disadvantage as to how to rule on that, because I am not familiar with what took place at those meetings. You gentlemen are because you have perused these documents and these stenographic notes and it has been impossible for me to do so and that is one reason why I didn't think that you were going into any oral testimony in regard to matters covered by the stipulation.

62

MR. WELLS: Mr. Examiner, we are not going into matters in regard to the violation of Section 8 (5) at the present time. This is the 8 (1) allegation to the effect that Mr. Hall called a meeting of all the employees of the editorial departments and there made certain statements to them.

TRIAL EXAMINER WEBB: All of that is included in these documents attached to the stipulation, isn't that true?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: Now, you have a witness on the stand and are going into that matter.

63 MR. WELLS: The fact that the meeting was called and that the particular statements were made is in the stipulation: The events leading up to it are not in the stipulation for the reason that I considered that immaterial and Mr. Denman and I had an agreement that he would attempt to put witnesses on to show those events and that I would be free to make my objection that the testimony was immaterial.

TRIAL EXAMINER WEBB: I don't object to the witness answering the question. Read the question, please.

(Question read.)

A There were.

Q (By Mr. Denman) What were those happenings?

MR. WELLS: Now, may it be understood, Mr. Examiner, that we object to the entire line of inquiry as immaterial?

TRIAL EXAMINER WEBB: Objection overruled. As I have already stated, it is dealing with something that is in evidence, but I am not cognizant of it because I haven't go through this evidence, but the objection is overruled. You may answer the question.

A Questions were asked of me by employees as to the probably effect on their employment with regard to their joining or not joining the Guild.

Q Did you answer those employees as to what the effect would be?

64 A I called the meeting of all the employees there and then I read the statement.

Q Was this statement then addressed in answer to those inquiries?

A Yes.

TRIAL EXAMINER WEBB: Aren't we going over old ground? Isn't all of that covered in the stipulation?

MR. DENMAN: No, sir, that is not covered by the stipulation.

TRIAL EXAMINER WEBB: Well, the stipulation then is not complete.

MR. DENMAN: No, the stipulation does not purport to cover all facts. We understood that Mr. Huntress was going to be put on the stand with reference to a certain matter.

TRIAL EXAMINER WEBB: Oh, I see. It was understood that you were going to put some witnesses on the stand to fill in certain testimony that you considered essential that was not covered by the stipulation.

MR. DENMAN: That is correct.

TRIAL EXAMINER WEBB: Well, proceed. If you had told me that at first we would have gotten along a lot faster.

Q (By Mr. Denman) Was there any other m tter that came up that led to the making of this statement?

MR. WELLS: Our objection goes to all this, Mr. Examiner?

TRIAL EXAMINER WEBB: Objection overruled. He may answer.

A The question by the different employees. There was more than one employee that raised the question.

65 Q (By Mr. Denman) In reference to the portion of the statement dealing with the things that the company had done for the employees, what led to the making of that statement?

A Well, I felt that the company was entitled to the credit that was due it for the benefits to employees; the things that they had done for the welfare of the employees; and I knew of other people who were claiming credit for those things and I thought that the Express Publishing Company should have the credit.

MR. DENMAN: That is all.

MR. WELLS: Without waiving our objection, Mr. Examiner, to that evidence, we would like to cross examine the witness on that point.

TRIAL EXAMINER WEBB: Certainly.

REDIRECT EXAMINATION

Q (By Mr. Wells) You say others were claiming credit for some of the good things—

TRIAL EXAMINER WEBB: He is your witness anyhow, Mr. Wells.

MR. WELLS: Not for this purpose.

TRIAL EXAMINER WEBB: No, this is redirect examination. You haven't closed your case yet, have you? You haven't closed your case for the Board yet?

MR. WELLS: We haven't rested, no.

TRIAL EXAMINER WEBB: The respondent has not put on any witnesses so far. Proceed.

66 Q (By Mr. Wells) I believe that you stated you understood that others were claiming credit for what the company had been doing for the employees. What do you mean by that, Mr. Hall?

A I mean that there was a general feeling on the part of the employees that they could look forward to different benefits that they were already receiving.

Q Well, did you mean that some of the employees had expressed to you the fact that they thought the Guild had done some good for them in regard to working conditions?

A No, I didnt mean that. I mean that some of the employees had made the remark that they could look forward to those benefits if an arrangement was made and they were organized, and we were already giving them those things.

Q You just didn't want the Guild to get credit for something it was not doing, is that it?

A No, not that. I wanted the Express Publishing Company to have full credit for what they were doing.

Q Well, I don't quite understand your statement as to others who were getting credit. Who were the others?

A When I said, "Others", I meant the other employees; some of the employees who had been making remarks that in the event of organization of the Guild they could look forward to those things and we were already giving them to them.

Q And you wanted to discount those statements made on behalf of the Guild?

67 A No, I didn't want to discount the statements made on behalf of the Guild. I wanted to establish the credit that was due us.

Q And point out that the credit was due you rather than anyone else?

A It was our money we were spending, yes.

Q What particular employees came to you with questions about what the effect of the Guild would be?

A Well, one Fred Malley.

Q Do you remember what he asked you?

A Yes, he came to me and says—this is substantially what he said. I don't remember the exact words—that he wanted to discuss the matter with me and it was a question of whether or not he should join the Guild. He said, "They are just putting pressure on me every day and I don't want to join."

TRIAL EXAMINER WEBB: Who did you say it was?

A Fred Malley.

TRIAL EXAMINER WEBB: What does he do?

A Sports editor of the Evening News.

TRIAL EXAMINER WEBB: When did that occur?

A That occurred sometime the early part of the year. I don't know exactly what day.

TRIAL EXAMINER WEBB: As near as you can fix it.

A Probably March.

TRIAL EXAMINER WEBB: 1938?

68 A Yes.

TRIAL EXAMINER WEBB: That was in the office during working hours?

A Yes, sir.

TRIAL EXAMINER WEBB: All right. Go ahead.

A And I told Fred that I couldn't advise him and wouldn't advise him in that respect; that it was a matter that he had to decide alone; that what we expected him to do down there was to take care of his job and as long as he did that his employment was satisfactory to us.

Q (By Mr. Wells) In relation to the time when you read your statement, can you give us as an approximation as to how long before you read the statement it was that Malley came to you?

A How long before I read the statement?

Q Yes.

A Well, I don't remember exactly when it was. It was sometime the early part of March, if my recollection serves me rightly and I read the statement later on.

Q Did anyone else come to you with inquiry about that same general matter?

A A department head approached me on it.

Q Who was he?

A A. W. Grant.

Q And what is his position?

69 A Managing editor of the Express.

Q Did any of the employees classified as editorial employees; that is, city editors, reporters, copy desk men, rewrite men, artists, photographers, copy boys or librarians, or sports writers, or society editors, or writers; come to you?

A None other than what I have mentioned.

Q And that happened sometime around the first of March?

A As I remember it; as my memory serves me, yes, sir.

Q You conferred with Mr. Huntress before making the statement?

A Before making the statement, I did.

Q Well, what was it that happened between early March and April 4, that caused you to make the statement?

A What happened between early March and April 4th?

Q Yes.

A I don't recall anything now except the statement I have just made.

Q Of course, you had attended the two bargaining conferences which were held on March 14, and March 30?

A I had attended them, yes, sir.

Q And five days following the second of these, you read the statement to the employees?

A I suppose that is correct. I don't now the date.

MR. WELLS: I believe that is all.

70 RECROSS-EXAMINATION

Q (By Mr. Denman) Mr. Hall, counsel asked you about someone else coming to you and you stated Mr. Grant. What was the nature of his communication to you?

A Mr. Grant reported to me that two employees in his department had approached him—

MR. WELLS: Pardon me, Mr. Hall.

To which we object as hearsay as to what they reported.

TRIAL EXAMINER WEBB: Objection overruled. Proceed.

A (Continuing)—that they had reported to him that pressure had been brought to bear on him to join the Guild and they wanted to know what to do and Mr. Grant reported that to me. I didn't talk with them.

Q Did Mr. Malley join the Guild.

A I understand he is a member of the Guild.

Q Now, I will ask you this question: Don't answer until counsel has an opportunity to object: As to whether you intended your statement to have the effect of discouraging membership in the Guild, what are the facts?

MR. WELLS: To which we object as immaterial.

TRIAL EXAMINER WEBB: Read the question.

(Question read)

A Well, if the witness were to answer it would be a matter of opinion. I don't see how it would serve to enlighten us in determining these issues, do you, sir?

71 MR. DENMAN: Yes, Your Honor. In trying criminal cases, which I sometimes indulge in, we frequently ask the defendant about his intent. Counsel says, "If this statement did have the effect of . . ." it is regardless of what the intent is. I think the intent is always important in the question of any violation of the law; that is, whether he did it intentionally. For instance, in any criminal case, you can ask the defendant, "You shot the man. Did you intend to do it?" And he can say, "No, I didn't intend to."

TRIAL EXAMINER WEBB: Isn't it presumed that a man intends to what what he does?

MR. DENMAN: Yes, there is a prima facie presumption that he does, but it is not conclusive and we think the question of wilfulness is always one that can be put in the case.

TRIAL EXAMINER WEBB: I think in this case it is more appropriate to let us get the facts in the record; just what was said and who said it, and what was done, when and where, all the facts, and then we will draw our own conclusions as to what we think was in the man's mind when he said it or whether or not he did it. I don't object to his answering the question, but as I say, it is just a matter of opinion. Objection overruled. You may answer.

A Will you read the question again?

TRIAL EXAMINER WEBB: Read the last question.

(Question read.)

72 A No, I had no intention of my statement discouraging membership in the Guild. I was very careful in making the statement not to leave that impression.

MR. DENMAN: That is all.

TRIAL EXAMINER WEBB: You don't know what impression it did make, though, do you?

A I may answer that by saying that—

TRIAL EXAMINER WEBB: You didn't intend for it to make a wrong impression?

A No.

TRIAL EXAMINER WEBB: But you don't know whether it did or not?

A Of course, I don't know how they took it.

TRIAL EXAMINER WEBB: Well, that doesn't matter. Proceed.

MR. WELLS: That is all.

TRIAL EXAMINER WEBB: That is all. Thank you, Mr. Hall.

(Witness excused.)

MR. WELLS: The Board now rests, Mr. Examiner.

MR. DENMAN: Respondent also rests. Of course, we want to still press our motion and don't want to waive that, but we have no further evidence.

TRIAL EXAMINER WEBB: Certainly not. Those motions are still before the Trial Examiner, but they haven't been ruled on, and as I stated, ruling was reserved.

MR. WELLS: At this time, Mr. Examiner, we
73 would like to move to conform the complaint to the proof as offered. I haven't had an opportunity to check carefully the complaint as to correctness of dates, and so forth. I will do that and submit to Mr. Denman any changes that I make.

TRIAL EXAMINER WEBB: That is the usual motion. Is there any objection?

MR. DENMAN: Well, I couldn't tell until I knew what changes were going to be made. If they made a new allegation—

TRIAL EXAMINER WEBB: As I understand it, Mr. Denman, that is the usual motion made by the Board's attorney when he concludes his part of the case and it relates, not to any material amendment to the complaint or changes in the complaint, but only to cover any changes with respect to names or dates. Is that true, Mr. Wells?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: Well, the motion is granted.

Now, I would like to hear from the Union. The Union seems to be represented here by Mr. Ragsdale. Have you any testimony or evidence that you wish to submit at the hearing, sir, on behalf of the Union?

MR. RAGSDALE: No, I don't believe we have any further testimony that we care to submit except an objection to one statement that was made in the arguments to the effect that the Guild and the negotiators for the Guild

had admitted that the contract which it asked for
74 was excessive. We believe that the record of the negotiation conferences will bear us out in our contention that we didn't admit that the requests were excessive.

TRIAL EXAMINER WEBB: I don't think that statement was made by any witness, was it?

MR. RAGSDALE: It was made by the attorney for the respondent.

TRIAL EXAMINER WEBB: As I have already stated, statements made by attorneys are not evidence in the case. We do not determine the case on statements made by attorneys in the case, unless, of course, they are made in the form of a stipulation and agreed to by all parties at interest.

MR. RAGSDALE: Well, the Guild has nothing further to offer.

TRIAL EXAMINER WEBB: If there is no more evidence or testimony that any party at interest wishes to present at this hearing, I wish to inform the parties at interest that anyone desiring to make an oral argument before the Trial Examiner may do so immediately after the hearing is concluded. If it is desired by any party at interest to make an oral argument before the National Labor Relations Board in Washington, D, C., it will be necessary to file a written request with the Board in Washington within ten days of the receipt of the intermediate report of the Trial Examiner. Of course, briefs may be filed by any party at interest, if they so desire.

75 Now, I would like to hear from you gentlemen with respect to whether you wish to make an oral argument after the conclusion of this hearing, which, of course, would not go on the record, or do you wish to reserve the privilege of filing a brief?

MR. DENMAN: The respondent would like to make an argument, either orally or by brief, and I think the brief would be the better, because the Examiner has not had an opportunity to read the stipulation yet, and so the argument would be meaningless, and if we could file a brief we would prefer to do that.

TRIAL EXAMINER WEBB: Certainly. Any party may file a brief. The only question now before us is that we have to set a date.

MR. DENMAN: As I understand it, Mr. Conklin can get us a copy of the testimony in about seven days and I am sure it wouldn't take me over three days after that to mail my brief; that is; to get it up and mail it; as far as I am concerned.

TRIAL EXAMINER WEBB: Well, there has not been much testimony taken and we are about to conclude the hearing and I would like to ask Mr. Conklin about when he expects to have this transcript completed.

(Discussion off the record.)

MR. DENMAN: We will promise to mail our brief within three days after we get the transcript. If we get it earlier than in seven days, we will mail it within
76 three days after the receipt of the transcript.

TRIAL EXAMINER WEBB: Well, now the transcript will be completed not later than the 13th of October. Now, how many more days do you want?

MR. DENMAN: Just give me three days in which to mail it from here.

TRIAL EXAMINER WEBB: That will be five days to get it in Washington.

MR. DENMAN: Of course, it won't get there within three days, but I will have it in the post office within three days after the receipt of the transcript.

TRIAL EXAMINER WEBB: All right. We will give you seven days, then. Have it understood that the brief with the required number of copies will be at the Regional Office not later than October 20. Is that satisfactory?

MR. DENMAN: Yes, sir, that is satisfactory.

TRIAL EXAMINER WEBB: Now, you understand that you dont' have to file a brief unless you want to.

MR. DENMAN: Yes, sir. We will make only a very brief argument.

TRIAL EXAMINER WEBB: And if you do file one, it must reach the Regional Office not later than October 20. If it does not, we will take it that you don't intend to file one.

MR. DENMAN: That is correct.

77 TRIAL EXAMINER WEBB: Well, gentlemen, if there is nothing more to bring before the hearing, I will declare that the hearing is now closed.

(Whereupon, at 4:30 o'clock p. m., the hearing closed.)

BLANK PAGE

CLERK'S COPY.

VOLUME III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

BLANK PAGE

VOLUME III.
BOARD EXHIBIT III.
APPENDIX TO BRIEF.

IN THE

United States Circuit Court of Appeals

FIFTH CIRCUIT

No. 9408

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

EXPRESS PUBLISHING COMPANY,
Respondent.

Petition for the Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(ORIGINAL RECORD RECEIVED JAN. 22, 1940)

BLANK PAGE

1 BOARD EXHIBITS 1-A, B, C AND D REMOVED AND PLACED IN TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD, SIXTEENTH REGION

In re Express Publishing Company
and
San Antonio Newspaper Guild
} Case No. XVI-C-293

Stipulation

In the above cause the following facts are stipulated:

1. The facts stated in paragraph one of the complaint are true.

2. The respondent in the course and conduct of its business purchases its blank paper for printing its paper, known as newsprint, from sources outside of Texas, partly in other States of the United States than Texas and partly in foreign countries, which is shipped by the sellers to respondent at respondent's expense to its office in San Antonio, Texas. The annual purchases are approximately seven thousand tons of newsprint at approximately forty-two dollars per ton. It purchases its ink partly from points outside the State of Texas and partly inside the State of Texas, the amounts purchased inside being approximately $10,721.74 annually and the amounts purchased outside being approximately $2,905.81 annually. The ink purchased inside Texas is manufactured in Texas. Parts used in the maintenance and repair of presses and machinery are purchased from sources outside the State of Texas amounting to approximately $1,853.09 per year. The balance are bought in Texas. Lead used in casting type is purchased from concerns located outside of Texas and shipped by sellers to respondent at respondent's expense.

Purchases amount to approximately $1,600 per year, being about 8 tons of lead.

Respondent is a member of the Associated Press and subscribes to the United Press and obtains from those two organizations a major portion of the news items published by it in reference to matters outside the State of Texas and part of the news items in reference to matters in Texas. Each paper carries daily stock and market
2 quotations of New York Stock Exchange, and quotations of grain and agricultural prices on various United States markets, and cotton on New Orleans and Memphis markets, all furnished by Associated Press by its local employees in Texas as shown below. Each of these, the Associated Press and the United Press, maintains its own employees and its own facilities for receiving the news at their respective offices located in the building of the Express Publishing Company and deliver the news items and market quotations from those offices to the respondent. Incident to its membership in the Associated Press the respondent furnishes to the Associated Press at its office in the Express Publishing Company building in San Antonio, Texas local news items. Respondent has a contract with a newspaper correspondent residing in Washington, D. C. by virtue of which he transmits to the respondent in San Antonio, Texas from Washington, D. C. his writings in reference to news and is paid therefore by the respondent on a space rate basis; and he also sells to other papers. Total payments to him are approximately $2,600.00 annually.

Respondent purchases from sources outside Texas in the United States (including N. E. A., McClures, Chicago Tribune and News, and American Institute of Public Opinion) articles written by writers who sell their writings to newspapers generally, and comics and cartoons, which are transmitted from such sources to the respondent at its office in San Antonio, Texas. The expenditures for the items described in the last sentence constitute ap-

proximate .025% of the respondent's total expenditures, the expenditures for these items being $33,833.41 out of total expenditures $1,334,183.92.

Respondent obtains part of its advertising from persons residing within the State of Texas and part from persons residing outside the State of Texas in other States. The advertising originating outside the State of Texas is handled in the following manner: Persons who desire to place such advertising have an arrangement with concerns whom they call agencies. Those persons in turn contact John Budd & Co. which has offices in New York, Chicago, St. Louis, Dallas, San Francisco and Los Angeles. John Budd & Co. contacts the respondent. Then John Budd & Co. is billed by the respondent with the cost of the advertising and is liable for the payment thereof to re-
3 spondent, regardless of whether the concern being advertised pays or not. The party termed the agency above receives a commission of approximately fifteen percent of the advertising bill and the John Budd & Co. receives approximately ten percent. The field which the advertisers attempt to reach by the distribution of such advertising is Southwest Texas. The persons whose products are being advertised in such advertising are engaged in selling or distributing their products in interstate commerce. The amount received by respondent for such advertising placed through John Budd & Co. constitute approximately 21.8% of the total that it receives for advertising and approximately 15.99% of its total revenue from all sources. The Company's total gross receipts from all sources amounts to approximately $1,406,607.00.

The combined circulation of the EXPRESS and EVENING NEWS is approximately 98,233 daily and the circulation of the SUNDAY EXPRESS is approximately 78,267. Of this circulation all of it is distributed within the State of Texas with the exception of approximately 94/100 of one percent. The respondent sells all its papers at its office in San Antonio, except that it mails a portion

thereof to subscribers, percentages going within and without the State being as abovementioned.

Respondent has only one office, consisting of its building located in San Antonio, Texas, and all its employees are officed in that building with the exception of two at Austin, Texas. It employs a total of approximately three hundred fifty persons, all of whom are local citizens of San Antonio, Texas, with the exceptions above mentioned, and reside in San Antonio, Texas. Of the above percentages of its papers distributed within the State of Texas, all except a very small percentage are distributd in the County in which San Antonio is situated, and the surrounding counties constituting Southwest Texas. With the exception of the sources of news originating outside of the State above described, the matter printed in its papers is written by its employees officing in its building and residing in San Antonio, Texas, and all its papers are actually printed in San Antonio, Texas. Its officers and stockholders are all Texas citizens and residents. It is an independent publisher, and not a part of any chain of newspapers. F. G. Huntress is President and Manager, Thornton Hall is Secretary and Assistant to the President, M. M. Harris is chief editorial writer for the SAN ANTONIO EXPRESS, A. W. Grant is Managing Editor of the SAN ANTONIO EXPRESS, and A. W. Walliser is Managing Editor of the SAN ANTONIO EVENING NEWS. L. G. Denman is one of the attorneys for the Company.

4

3. The San Antonio Newspaper Guild is a labor organization as defined in Section 2, Subsection 5 of the National Labor Relations Act. The San Antonio Newspaper Guild is affiliated with the American Newspaper Guild, which is in turn affiliated with the Committee for Industrial Organization. The local organization was organized in December, 1936 of newspapers published in San Antonio, Texas, and admits to membership editorial, advertising, carrier, office and circulation department employees. In

January, 1937 negotiations were carried on with the SAN ANTONIO LIGHT, a Hearst paper, the only competitor of the respondent in the City of San Antonio, which negotiations resulted in the posting of bulletin board statement of the policy by the management of the LIGHT in January, 1937, and which later, in March, 1938, resulted in a written contract being entered into between the LIGHT and the Guild. This contract with the LIGHT a copy of which is attached, Exhibit E. E. is in effect until March 7, 1939.

4. All the employees of respondent engaged in the editorial department, both of the NEWS and the EXPRESS, namely, city editors, reporters, copy desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers and sports editors and writers, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act. The respondent corporation publishes both papers and controls the employment, wages, hours, and working conditions of the employees of both papers.

5 5. There are 42 employees included in the above classifications, of which 31, constituting more than a majority, have at all times referred to in the complaint been members of the San Antonio Newspaper Guild and have designated the Guild to bargain for them in accordance with the Act.

6. Prior to March 1, 1938 the Guild appointed Frank G. Ragsdale president of the local Guild, an employee of the LIGHT, Henry Drelman, a San Antonio lawyer, Sidney Berkowitz, an employee of a San Antonio department store, as negotiators. The Guild delivered to respondent the letters dated March 1 and 8, 1938, marked Exhibits A and B respectively, attached hereto, and on March 10, 1938 the respondent replied as per Exhibit C attached, to which the Guild replied as per telegram dated March 12, 1938,

marked Exhibit D attached. On March 14, 1938, pursuant to this correspondence a meeting was held, of which, attached as Exhibit E, is a correct stenographic report, and attached as Exhibit F is a copy of the proposed contract submitted by the Guild referred to in the report of this meeting. The respondent then wrote to the Guild as per letter of March 25, 1938, Exhibit G attached. Pursuant to this letter a meeting was held on March 30, 1938, of which attached is a correct stenographic report marked Exhibit H. On April 4, 1938 Thornton Hall, Secretary of respondent, called a meeting of the editorial department employees and read a statement to them, of which attached is a true copy, marked Exhibit I. On April 6, 1938 the Guild wrote to respondent as per Exhibit J attached. On April 7, 1938 the respondent replied as per Exhibit K attached. On April 13, 1938 the Guild published a document marked Exhibit L attached, distributing it among its members and other members of the public, inviting them to a gridiron dinner, and mailed copies of it to some of respondent's representatives who had been present at the negotiations. On April 13, 1938 the Guild wrote to the respondent as per Exhibit M attached. On April 16, 1938 the respondent replied as per Exhibit N attached. Pursuant thereto a meeting was held on April 21, 1938, of which the attached Exhibit O is a correct stenographic report. A copy of the statement set out in full on pages 2 to 12 was presented to respondent at this meeting.

6 On May 3, 1938 the Guild wrote to respondent as per letter attached marked Exhibit P. On May 4, 1938 respondent replied to the Guild as per letter attached marked Exhibit Q. On May 14, 1938 the Guild wrote to respondent as per Exhibit R attached. On May 16, 1938 the Guild wrote to the respondent as per Exhibit S attached, and the respondent replied on May 17, 1938 as per Exhibit T attached. Pursuant thereto, on May 23, 1938, a meeting was held, of which the attached Exhibit U is a correct stenographic report. On May 30, 1938 the Guild filed charges against the respondent on which this proceeding is based.

Mr. LeBaron, Field Examiner for the Sixteenth Regional Office of the National Labor Relations Board, called at the Express and had a meeting with Mr. Thornton Hall, Mr. M. M. Harris and Mr. Denman in reference to whether he could he helpful in bringing the parties together. A discussion was had between them and tentatively it was understood by respondent's representatives and Mr. LeBaron that a further meeting would be called if desired by the parties. Mr. Huntress was out of the City at the time and LeBaron was informed he would not return until July 18. When Huntress returned, Mr. Hall was out of the City, and the respondent suggested to Mr. LeBaron on or about July 20, 1938 that Hall would be back in time for a meeting on August 4. The Guild then wrote to respondent as per Exhibit V attached, on July 20, 1938. On July 22, 1938 Mr. LeBaron and Mr. Denman, attorney for respondent, had a telephone conversation in which the following was stated: LeBaron asked if it was necessary to wait for Mr. Hall's return. Denman stated that the respondent would prefer for Hall to be present, as he belived Huntress would want to consult with him. Furthermore, Denman said that he would probably advise Huntress instead of coming to the meeting personally to have Hall, Grant, Walliser and Denman appear as negotiators, so that since the Guild was not present but appeared by negotiators, respondent would appear in the same manner, and that it was Denman's experience that negotiations were some times concluded more readily where negotiators carried them on and reported back to the parties for their approval rather than the parties attempting to negotiate direct; that he was not sure he would give Huntress this advice; and if he did so he was not sure Huntress would follow it, as Huntress generally liked to speak for himself. LeBaron stated that although he could not know exactly what was in the Guild's mind, and of course was not speaking for them but merely trying to be helpful to the parties, he thought that the essence of a union contract was some reasonable restriction on the right of

7

the employer, giving employees a voice with management in determining tenure of employment, and that the wage scales and matters of that sort were secondary, and he did not think, although he did not definitely know, that they were of such importance to the Guild members at present, and asked Denman whether he thought Huntress would be willing to include in a contract a stipulation making some such restriction on his right to employ and discharge. Denman stated that as to the provisions to that effect in the contract submitted, Huntress's views had been stated in his written statement; that as to whether the Guild could persuade him to change his views or to accept some restriction Denman had no way of knowing, as he was a lawyer and not a fortune teller, and that would be speculating about Huntress's future mental attitude. LeBaron again asked Denman what he personally thought about it and Denman said that as far as he personally was concerned he would not request Huntress to put any restriction on his power to dismiss him as attorney, since when he appeared in court he had the power to speak for Huntress and that Huntress ought to have the power to discharge him whenever he felt that Denman no longer spoke correctly for Huntress; that in the same manner, he, Denman, would think that Huntress ought to have the right to terminate the employment of one of his writers when he no longer reflected Huntress's views; that Huntress alone should be the sole judge of that. But Denman said that Huntress's views in reference to this might be entirely different from Denman's. LeBaron asked if any contract could be entered into. Denman told him that Huntress while not requesting it of the Guild had stated to the negotiators at the meetings that they were at liberty to submit any other contract and he would give it careful consideration. LeBaron asked if Denman could suggest any contract which Huntress would sign. Denman stated that Huntress at the negotiations had made a statement to the effect that he desired employment terms to continue as they were, but that Denman

did not believe the Guild would be willing to sign
8 a contract on that basis and that Denman thought it would be useless to submit it. LeBaron then stated that he was willing to remain here if he thought it would be of some benefit, but that if it would be of no benefit there was no use of his remaining. Denman stated that the Guild had a right to have every opportunity to persuade Huntress to come to their views and that Huntress would be glad to give them every opportunity they desired to try to convince him to meet their wishes, and that Denman wished to assure LeBaron that Huntress would meet the Guild representatives on any occasion and consider carefully anything they had to present and that Denman had no way of predicting whether they could persuade Huntress or not, but he had no further information as to Huntress's probable actions than LeBaron had as to what he could be persuaded to do. Le Baron then stated that in view of the situation all that was left for him to do was to recommend continued prosecution of the charges then on file. Denman answered that that appeared to him to be meaningless and useless procedure because the respondent was willing to continue to negotiate and that it appeared that all that could be asked of the Board was to send the matter for further negotiations and that the respondent was willing to do without any order of the Board that the Board could not make an agreement between the parties. LeBaron stated that he would contact the Guild and give them the benefit of the conversation. LeBaron subsequently contacted Oscar Owens, Chairman of the Express-News Unit of the Guild, and informed him of the substance of the conversation with Denman.

Prior to this telephone conversation the respondent had mailed a letter on July 22, 1938 to the Guild, copy of which is attached as Exhibit W. Mr. Ragsdale of the Guild upon subsequently receiving Exhibit W called Mr. Denman to ask which happened first, the conversation in which the meeting was called off or the mailing of the letter, Ex-

hibit W, and Mr. Denman informed him that the telephone conversation was had last. On August 1, 1938 the Guild wrote to respondent as per letter attached as Exhibit X, to which the respondent replied on August 2, 1938 as per Exhibit Y attached. On August 4, 1938 Mr. Denman telephoned from Kingsville, Texas to Mr. Ragsdale as to whether the conference would be held so that, if so, he could return to San Antonio
9 for it. In the conversation it developed that Mr. Ragsdale thought the conference was called by Mr. Huntress, while the respondent considered that the conference was called by the Guild. Each party expressed a willingness to meet if the other desired to call a conference. But each stated that it did not consider that it had called a conference and therefore both considered that under the circumstances there would be no meeting. The Guild addressed the attached letter dated August 4, 1938, marked Exhibit Z, to the respondent stating its understanding, and Denman addressed the attached letter marked Exhibit AA to the respondent stating his understanding. The respondent then addressed the attached letter dated August 5, 1938 to the Guild, Exhibit BB. The letter from Denman referred to in the respondent's letter, Exhibit BB, is the above Exhibit AA. There were no subsequent communications either from the Guild to the respondent or from the respondent to the Guild. Subsequently on September 22, 1938 Edwin A. Elliott, Regional Director of the National Labor Relations Board wrote to respondent as per letter, Exhibit CC, attached, to which respondent replied as per letter of September 30, 1938, Exhibit DD attached.

Either party may offer additional testimony subject to the rulings on its admissibility, but no testimony to attempt to controvert any of the facts agreed to above.

Frank G. Ragsdale

President San Antonio Newspaper

Guild

L. N. D. Wells, Jr.

Atty., XVIth Region National Labor

Relations Board

Leroy G. Denman

Atty. for Express Publishing Co.

10 EXHIBIT A

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

March 1, 1938

Mr. Frank G. Huntress, Publisher,

San Antonio Express and Evening News,

San Antonio, Texas.

Dear Mr. Huntress:

Editorial department employes of the San Antonio Express and Evening News have designated the San Antonio Chapter of the American Newspaper Guild as their collective bargaining agent, in accordance with the National Labor Relations Act.

The Guild has chosen as its negotiators Mr. Henry B. Dielmann, Mr. Sidney Berkowitz, and Mr. Frank G. Ragsdale, who wish to present for your consideration a contract.

In keeping with the established policy of the American Newspaper Guild some of your editorial department employees desire to attend the conference between yourslf and the negotiators to act as observers.

As secretary of the San Antonio Chapter of the American Newspaper Guild I have been instructed to request that you set a time and place to meet with these gentlemen at your earliest convenience.

Very truly yours,

Cliff Potter, Secretary

11

EXHIBIT B

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

March 8, 1938.

Mr. Frank G. Huntress, publisher,

San Antonio Express and Evening News,

San Antonio, Texas.

Dear Mr. Huntress:

You have no doubt received our letter of March 1, asking for a conference with you, but in case it has been mislaid, editorial employes of the Express and Evening News have designated the San Antonio Newspaper Guild, a local of the American Newspaper Guild, as their collective bargaining agent under the terms of the National Labor Relations Act.

Mr. Sidney Berkowitz, Mr. Henry B. Dielmann, and Mr. Frank G. Ragsdale were named as Guild negotiators to present for your consideration a contract, and in accordance with Guild practice, employes of the Express and News wish to attend these conferences as observers.

The Guild respectfully requests that you arrange for this conference before Saturday, March 12, and in the event you are called out of town shortly, the Guild requests that you authorize someone to represent you in negotiating with the Guild.

Yours truly,

Cliff Potter secretary

12 EXHIBIT C

March 10, 1938

Mr. Cliff Potter, Secretary

San Antonio Newspaper Guild

San Antonio, Texas

Dear Mr. Potter:

We have your letters of March 1 and 8.

My first available date for the conference which you request will be next Monday, March 14th, at 5 o'clock in

the afternoon, in the directors' room on the seventh floor of the Express Publishing Company Building.

Your negotiators will be welcome to meet us at that time and place, and we prefer that any members of The Express' and The Evening News' reportorial and news staffs desiring to attend shall be present upon that occasion.

Very truly yours,

Express Publishing Company

(Signed) Frank G. Huntress

President

FGH—h

EXHIBIT D

San Antonio, Tex., March 12, 1938.

Frank G. Huntress, Publisher:

Delr Monday a. m. San Antonio Express and Evening News, San Antonio:

Thank you for letter appointment suggested is satisfactory.

Cliff Potter, Secy

San Antonio Newspaper Guild.

14 EXHIBIT E

STENOGRAPHIC REPORT OF MEETING HELD BETWEEN OFFICIALS OF THE EXPRESS

PUBLISHING COMPANY AND NEGOTIATORS DESIGNATED BY SAN ANTONIO NEWSPAPER GUILD, HELD IN THE EXPRESS BUILDING AT FIVE O'CLOCK P. M. ON MARCH 14, 1938.

PRESENT:

Frank G. Huntress,

A. W. Walliser,

A. W. Grant, and

Thornton Hall,

Officials of Express Publishing Company.

Frank G. Ragsdale,
Sidney Berkowitz,

Henry B. Dielmann,

Negotiators designated by San Antonio Newspaper Guild.

Mrs. Alice Bonnett,

Warren Darby,

S. J. Ryan,

Oscar Owens,

Joe Dynan,

Observers from San
Antonio Newspaper Guild.

T. H. Burger,
Court Reporter.

MR. HUNTRESS: Now, before we proceed, do you all want to enter into the expense of this stenographer, or not?

MR. DIELMANN: We will have to refer that to the Guild itself. They had one here, they did not know that you were going to have Mr. Burger here.

MR. HUNTRESS: Of course, they will not get the proceedings unless they do.

MR. DIELMANN: Is it satisfactory to you gentlemen? (addressing Guild observors present). I understand, then, that the expense of this stenographer will be split fifty-fifty and each will be entitled to his copy of the proceedings.

* * * *

MR. HUNTRESS: We are waiting on the matter we are called for.

MR. DIELMANN: I might state to Mr. Huntress and the other gentlemen present that Mr. Berkowitz and Mr. Ragsdale and myself have been requestd to act as negotiators by the members of your editorial department who are members of the San Antonio Newspaper Guild. We are informed that more than fifty per cent of the editorial department of both the Evening News and of the Express are members of the Guild and that they have designated the Guild as their agency to take up negotiations with you. And we are here at their request to present the matter of their organization, and the contract which they suggest to you.

MR. HUNTRESS: We are quite willing to talk
16 this matter over with you so that we may get the Guild's point of view and that you may get ours.

MR. DIELMANN: Now, we have been given a contract which they contend is a fair contract and which, of course, they would care to have considered as the basis of negotiations between your company and us as negotiators for them.

MR. HUNTRESS: I will make this statement here, (reading):

"The publishers and the editors of San Antonio Express and San Antonio Evening News always have maintained, strictly and genuinely, just and impartial relationship toward the employees of the news and editorial departments of these two newspapers.

"No holder of, or applicant for, employment in those departments has been retained or engaged upon any consideration of his membership or non-membership in any union. He has not even been questioned by the publisher, nor by any responsible editor, as to membership in such union.

"The Express Publishing Company and its responsible editors desire and intend to continue to conduct its news and editorial departments strictly upon that same fair and impartial basis.

"Since 1902, as a general rule, the Express Publishing Company has allowed editorial department employees who have been with it a year or longer, two weeks vacation, with full pay, annually. It also has allowed sick benefit of two weeks at the regular scale. Old employees have been
17 taken care of with allowances of longer pay during sickness and with voluntary pensions upon retirement from active service.

"During the worst years of the depression, instead of following the course taken by the general run of business and industrial houses, the Express Publishing Company retained its employees on its payroll, even though it became absolutely necessary to cut all salaries and wages in order to do so. This Company considered that course preferable to wholesale dismissals, with consequent increase in the general unemployment. Now this Company is paying wages and salaries which compare favorably with those of other newspapers in the South and Southwest."

MR. DIELMANN: I might make this statement, that our position is, of course, as negotiators. We are not in the position of arbitrators, and anything that we would discuss, of course, be subject to reporting back to the members of the Guild. So that our position here is that of negotiators with the Express Publishing Company.

MR. HUNTRESS: While we see no reason to change our just and impartial policy in the news and editorial departments of our newspapers which has been maintained up to the present time, every consideration will be given to the Guild members and any other employee in those departments of our newspapers.

MR. BERKOWITZ: Of course, in this contract are listed some of the things which, as I understand, the members of the Guild consider some of the evils of their particular profession at the moment, and we would like to have those brought to your attention in order to see whether or not you could be persuaded by them to correct some of the things which they consider at the moment exist to their disfavor.

MR. HUNTRESS: We will give it consideration and notify you.

MR. DIELMANN: Do you suggest that we leave the contract with you and you discuss it and notify us when we should return to discuss it with you further?

MR. HUNTRESS: Yes.

MR. BERKOWITZ: Would you care to make any particular date for the future, Mr. Huntress?

MR. HUNTRESS: No, I would not.

MR. DIELMANN: Mr. Berkowitz made that request for this reason, that he may have to go to New York in the near future, and if it were possible he would like to get an approximate date when you would be ready for us to come back and talk to you.

MR. HUNTRESS: Well, I am leaving the city myself and I don't know when I will return.

MR. DIELMANN: Couldn't you give us an approximate date?

MR. BERKOWITZ: You would not care to discuss it before you leave the city, Mr. Huntress?

MR. HUNTRESS: I think I already stated to you all that I would give it consideration.

MR. BERKOWITZ: Of course, there is nothing more that we negotiators can do except to present the case and have you consider its merits, and consider also the time factor. Unless we can arrive at a definite understanding as regards the whole proposition at an early date, the time factor would necessarily delay the whole thing for you and keep it hanging over your head, and probably worry you to some degree, and we of course are devoting our time to it and would like to get an expression from you before you leave the city, if we could.

MR. RAGSDALE: Might I say that so far as I know, and I know most of the people who are members of the Guild, there is no idea on the part of any of them to, as the

saying is, put the bee on the Express. Their situation is much the same as the situation of all newspaper editorial departments in that traditionally employment in an editorial department has been hazardous. A man hardly ever knew whether he was going to be fired tomorrow or not. That not only applies to us but it is everywhere in the newspaper business.

The Guild has its major objective to make some permanence to employment, without any idea of keeping a man in a job when he is incompetent. I do not think there is anyone in the Guild who has any desire to do that, but they would like to make it a profession and not something that you just have to work at until you get thrown out of it and have to try to get something else. They want to make it a permanent profession. That is the main idea that is behind this contract.

Of course, we have our ideas about what wages should be. As far as I am personally concerned, I have no hope of getting them up to where I think they should be, for some time to come. It took the printers a great many years to get theirs up to where they thought they ought to be, and it will take us some time. We hope we do not have to work as long as the printers did, but we do have to make a start and we want to make the start just as high as we can without being a burden to anybody. We feel that the things in this contract are fair and we want to work just as hard as we can to get them. And we would like to do it in all good spirit, in a spirit of give and take, and not by putting a burden on anybody. We would like to sit down around a table and discuss these things and see why they are necessary and why we want them, and why we think we ought to have them. That is one of the reasons why I would like to see us sit down and take this thing up clause by clause and see what it means to us, as well as what it means to you.

MR. DIELMANN: Mr. Huntress, you do not feel at this time that we could get together before you leave town?

MR. HUNTRESS: I don't see how we could. You may think I have nothing to do but just to sit around here and listen to you.

MR. DIELMANN: We know you are a very busy man. It is just a question of conflicting dates. If you should leave town soon and Mr. Barkowitz would be gone, of course it would delay this thing considerably. That is the only purpose I had in asking you if you could not fix a date. We know that you are very busy, and naturally we would like to accommodate ourselves to you as much as possible.

MR. BARKOWITZ: After all, we are representing someone who is asking for something, and naturally their time can be suited to your convenience.

MR. DIELMANN: You do not feel that you could indicate any time now?

21

MR. HUNTRESS: As stated before, I cannot. I don't know when I will get back, and that is a matter to be decided later.

MR. DIELMANN: Then you would prefer we leave the contract with you, and as soon as you can you will notify us to come back and discuss the matter with you? Am I correct in that assumption.

MR. HUNTRESS: That is right.

MR. RAGSDALE: Wouldn't it be possible for you to designate someone to speak for you?

MR. HUNTRESS: I think we have made it very clear to you, haven't we, that we would give this matter consideration and that we would notify you just as soon as possible? And that is what we will do.

MR. RAGSDALE: That is so indefinite.

MR. DIELMANN: It seems that is about all we can hope to do then.

MR. BERKOWITZ: The only thing we can do is to present it to Mr. Huntress and await his convenience. And we can report back to the Guild, or the observers who are present can report it, and we can in turn report officially.

MR. DIELMANN: That is all we have to say. Thank you very much for your time.

* * * *

The hearing thereupon adjourned sine die.

22 I, T. H. Burger, Court Reporter, hereby certify that I was employed to, and did, take down in shorthand the proceedings had at the meeting between officials of the Express Publishing Company and the negotiators for the San Antonio Newspaper Guild, held in the Express Publishing Company Building, at five o'clock p. m., on the 14th day of May, A. D., 1938; and I further certify that the foregoing 8 pages contain a full, true and correct transcript of all proceedings had at said meeting.

Witness my hand this 15th day of March, A. D., 1938.

T. H. Burger
Court Reporter.

23 EXHIBIT G

March 25, 1938.

Mr. Cliff Potter, Secretary
San Antonio Newspaper Guild,
San Antonio, Texas.

Dear Mr. Potter:

This is to advise you that we will be ready to meet with your representatives Wednesday, March 30th, at 4:30

p. m., in the directors' room on the seventh floor of the Express Publishing Company Building.

Very truly yours,
EXPRESS PUBLISHING COMPANY

Signed Thornton Hall
Assistant to the President.

Thornton Hall/s

24 EXHIBIT H

MINUTES

OF

Conference Between Publishers of San Antonio Express and Rep esentatives of the San Antonio Newspaper Guild on the subject of contract.

Held in Directors' Room of the San Antonio Express Publishing Company at 5:00 o'clock P. M.,

WEDNESDAY, MARCH 30th, 1938.

There were present:

Mr. Frank G. Huntress, President of Express Publishing Company.

Mr. A. W. Grant of the Editorial Department.

Mr. M. M. Harris of the Editorial Department.

Mr. Thornton Hall of the Editorial Department.

Mr. A. W. Walliser of the Editorial Department.

Mr. Frank Huntress, Jr.

Mr. Leroy Denman, attorney for the Express Publishing Company.

Mr. Sidney Berkowitz, negotiator for the San Antonio Newspaper Guild.

Mr. Frank Ragsdale, negotiator for the San Antonio Newspaper Guild.

Mr. Henry B. Dielmann, negotiator for the San Antonio Newspaper Guild.

Mr. Stanley Ryan (present for a while).

25 Mr. T. H. Higgins.

Mrs. Alice Bonnett.

Mr. K. P. Miller.

Henry L. Gazley, shorthand reporter.

MR. HUNTRESS, Sr: Is it all right for Mr. Gazley to represent Mr. Burger?

MR. DIELMANN: Yes, certainly.

MR. HUNTRESS, Sr: Mr. Burger is out of the City today.

MR. HUNTRESS, Sr., thereupon read the following objection of the Publishers to the contract submitted by the San Antonio Newspaper Guild, on March 14th, 1938:

"We have thoroughly considered the provisions of the contract submitted to us by the negotiators in behalf of

San Antonio Newspaper Guild on March 14, 1938. We find the terms of this proposed contract unreasonable and unacceptable.

The proposed requirement that the Publisher set up and maintain a 'Guild Shop', with employment conditioned upon the applicant's Guild membership, is contrary to the letter and intent of the National Labor Relations Act. That statute provides that an employee is not required to join a labor union, or to pay dues or assessments, to any organizations, unless he chooses to do so of his own free will. Existing independent employment relations may be
26 continued by the individual employee, or by employees as a group.

The proposed contract calls for unreasonable restrictions upon the Publisher's rights of both employment and discharge in the conduct of the news department. It also would undertake to tie the Publisher's hands as regards salary-scales in relation to the condition and conduct of the business. Furthermore, in several instances it would require pay for employees, without working.

The proposed requirement of written notice stating cause of an employee's dismissal from the Publisher's employ is contrary to the rights accorded by the Texas Constitution, as decided by the Supreme Court of this State. The proposed provisions as to sick leave and pay therewith are unreasonable on several grounds, and particularly in consideration of the fact that Texas law requires an employer to carry employee-compensation insurance, and that Federal law requires the employer to pay social security tax, so that he cannot afford to bear this obligation personally.

The proposed restrictions upon the nature and character of services to be rendered by photographers and reporters are unreasonable and unwarranted.

The proposed restriction upon the source and authorship of news and feature matter for these newspapers is utterly unreasonably and impracticable upon its face. Certainly no publisher should consent to any such censorship from any source.

The classifications proposed for employees in the application of the contract are unreasonable, unwarranted and unacceptable to the company.

MR. BERKOWITZ: May I read the original of that, Mr. Huntress?

MR. HUNTRESS, Sr: That is the original.

MR. BERKOWITZ: I say, may I read it right now?

MR. HUNTRESS, Sr: Yes.

MR. BERKOWITZ: (After reading the document). In regard to the first part of the statement (reading): "That statute provides that an employee is not required to join a labor union, or to pay dues or assessments, to any organizations, unless he chooses to do so of his own free will. Existing independent employment relations may be continued by the individual employee, or by employees as a group."

It was my understanding as negotiator for the Express Publishing Company's employees that the majority of the employees are members of the Newspaper Guild, and have so appointed the negotiators to act as their bargaining agent in the matter. Would that particular status of each employee prejudice their right to bargain with you as a group?

Mr. Huntress made reply to this question and afterwards asked that it be stricken out, which was agreed to by Mr. Berkowitz.

MR. BERKOWITZ (Continuing): Looking at it from the angle that the employees have presented certain things which they have asked you to pass upon, and which you have made a statement regarding, these employees see now and it is clear we have combined for the purpose of presenting their claims to you. Do you still think that on some basis you would refuse to treat with them as a group; or do you object to the present contract and would prefer to have such things further explained or argued upon and negotiated about; or would you rather have them submit something in accordance with the exceptions that you take here?

MR. HUNTRESS, Sr: I think we stated our position clearly there. But if the Guild desires to present another proposition, of course, we will consider it.

MR. RAGSDALE: Isn't it true that under your present contract with the Typographical Union you make some restrictions?

MR. HUNTRESS, Sr: We do not.

MR. RAGSDALE: In case you cannot employ a Union printer and you find one who is not a Union printer, then you have to pay Union wages before they will work for you; in other words, you do not object to following one procedure in the composing room and typographical room and press room, but are not willing to follow it in the editorial room.

MR. HUNTRESS, Sr: As a matter of fact, we don't intend to have the Guild or any Union tell us how to run our Editorial Department. We have the right to run our business the way we think is best so that we can make it possible for the stockholders to receive something.

MR. RAGSDALE: This is a wide open argument; regardless of the employees, Gentlemen—but I won't ask it.

But this Guild Shop clause has never been designed, so far as I know, for the Guild to bring any real restriction on the Publisher; it is designed largely for the protection of the Union, and I mean under no interpretation of that clause would it be in the position of saying who should be hired. The clause is merely to protect the Union as it is set up and as the Publisher has the contract with it, and to keep harmonious relations; where some members of the staff are in and some out there is always friction, and it seems to me that provision under the Guild Shop clause—it is not a closed shop clause by any stretch of the imagination—would be to definitely benefit the Publishers as well as the employees.

MR. HUNTRESS, Sr: For many years the Company's policy has been to carry all of its employees on the pay roll along with the work that they may do or that is assigned to them. Several of them have been with this company for many years. I think that answers your question.

MR. DIELMANN: I believe you have mentioned one matter there that I think Mr. Berkowitz didn't quite understand—at least, from the way I heard him express himself. You say, as I understood you, if you did not recognize—or, rather, if you did recognize the item they have in the contract as it stands now, you would be bound to discharge any employee who is not a member of the Guild. Of course, the Guild could not prescribe and under present conditions insist on discharging an employee in the Editorial Department who is not a member of the Guild. They are all, of course, going under the assumption, in their relations with you under the contract that they would be willing to have all employees belong to the Guild, that you would give them an opportunity of supplying you with employees in the Editorial Department who would be willing to be members of the Guild; and if that were the case, why, of course, the thirty-day clause would apply to everybody employed in the Editorial Department, as contemplated under this contract; in other words, they are assuming their relations with you would be on the

basis that all employees would be under the Guild because all employees would be members. In other words, they would not want to dictate to you as to the matter of an employee who was not a member of the Editorial Department at all, whether you should keep him on or not.

MR. HUNTRESS, Sr: I believe the managing editors of the two newspapers are qualified to employ the men whom they desire to work for our two publications.

MR. DIELMANN: I think the contract recognizes that. In other words, they don't want to dictate to you whom you should employ, except they would expect that member to become a member of the Guild, so all employees of the Editorial Department would be members of the Guild.

MR. HUNTRESS, Sr: Have you read the contract, Mr. Dielmann?

MR. DIELMANN: Yes, sir. I understand they are not attempting to dictate to you whom you should employ, but they do expect that every member of the Editorial Department shall be a member of the Guild, and that they have the right to suggest to you members to fill any vacancies.

MR. BERKOWITZ: Of course, that thing applies in the Typographical Union, I believe. Doesn't it, Mr. Huntress?

MR. HUNTRESS, Sr: Now, we are dealing with the Guild, Mr. Berkowitz.

MR. BERKOWITZ: Well, I mean that purely to clarify the question in mind.

MR. DIELMANN: Am I right in my interpre-
31 tation that under the contract of the Guild now, Mr. Huntress, you or the managers of the Editorial Department have the right to select their employees except they are expected to join the Guild?

MR. RAGSDALE: That clause requiring they are expected to join the Guild within thirty days and remain members in good standing.

MR. DIELMANN: Yes, but it does not dictate whom or how they shall be employed, except that they become members of the Guild and remain in good standing,—is that correct?

MR. RAGSDALE: Yes, sir.

MR. DIELMANN: That is my interpretation. In other words, they don't dictate to you whom you shall employ and whom you shall not employ; the only thing they ask is, when you do employ somebody that they become members of the Guild and remain in good standing. See? They wouldn't dictate to you whom you shall exactly employ.

MR. HUNTRESS, Sr: Do you desire to violate the National Labor Act?

MR. DIELMANN: Mr. Huntress, I believe you have a misconception of my position there about the Act, in this respect: There is nothing in the Act that prevents an employee from making a contract of this kind with his employer; but the Act merely says if you don't make a contract of this kind, why, of course, the Guild could not demand that you fire a person who is not a member of the Guild, for instance.

MR. HUNTRESS, Sr: We can fire any member of the Guild any time if he doesn't give the services required of him.

32 MR. DIELMANN: That is right.

MR. HUNTRESS, Sr: Of course, we don't expect to fire any Guild member because they belong to the Guild.

MR. DIELMANN: I understand. I mean the right of the employee to remain outside of the Guild is, of course, one guaranteed him by law, he doesn't have to join. But this contract is based on the assumption that all of your employees would be members of the Guild, consequently there would not be any members in the Editorial Department who would not be members of the Guild, so any controversy about any man on the outside would not arise, unless there were some members who would not become members of the Guild.

MR. RAGSDALE: I cant' see why the question should come up as a violation of the law. If that would be a violation of law, it is already violated in the requirement of the other departments.

MR. DIELMANN: Of course, this whole relationship as proposed in this contract is based on a contract between you and the Guild, it is not a matter of violating the law. We are not trying to compel somebody who doesn't want to have anything to do with your Editorial Department from doing as he wants to do or prevent him from insisting on his rights, that is it. As I understand it, and if I am correctly informed, practically all of the members of the Editorial Departments are members of the Guild, that is the information I have—I don't know how correct that is, but I assume it is correct.

MR. HUNTRESS, Sr: Well, I don't know.

MR. DIELMANN: I believe the underlying idea of the first paragraph in the contract is that if all the
33 members of your Editorial Department were members of the Guild, it would be just making a bargain with the members of the group and with the group, and maybe a few who do not belong to the group.

MR. HARRIS: As I interpret that section, Mr. Dielmann, that section is mandatory—"shall." I mean it is a

contract wherein the Guild feels that all employees be members of the Guild, within these classifications, of course, but leaves the managing editors at liberty to select their own employees.

MR. HALL: What would happen if a man did not want to join the Guild?

MR. DIELMANN: What do you mean now—one of your own employees?

MR. HALL: Yes. We would be forced to discharge him, wouldn't we?

MR. DIELMANN: Yes, under the present wording of the contract.

MR. HALL: Well, now, isnt' that a violation of the Wagner Act.

MR. DIELMANN: No. You don't have to keep a man if you don't want to.

MR. HALL: It doesn't say that, though. That Act guarantees him the right to join or not to join as he sees fit.

MR. HARRIS: There is one question I would like to put, or, rather, possible information I would like to have for the purpose of clarity; it comes to my mind by something Mr. Dielmann said and something Mr. Berkowitz said—in reference to the publisher's willingness to negotiate with the Guild. The questions were involved and I don't think Mr. Huntress understood them. I can't believe Mr. Berkowitz intends to employ unwillingness to negotiate since we are here negotiating.

34 MR. BERKOWITZ: I would like to have the reporter read it.

(The reporter read as follows):

"MR. BERKOWITZ: *** It was my understanding as negotiator for the Express Publishing Company's employees that the majority of the employees are members of the Newspaper Guild, and have so appointed the negotiators to act as their marketing agent in the matter."

MR. BERKOWITZ: In regard to the first paragraph, in which he took exception, such exception was taken with the purpose of determining as to whether or not Mr. Huntress would treat with the Guild as a group; but the construction of such question was not intended in the manner in which it reads in the first paragraph.

MR. DENMAN: We will just state with reference to any question, as to whether the Company would negotiate with the Guild as a group, that it is willing to do so and is doing so.

MR. BERKOWITZ: It has provided for this, it is willing to negotiate.

MR. DIELMANN: Mr. Huntress, may I make this observation? Let me assume that all managers of the Editorial Department are either members of the Guild or willing to become members of the Guild. If they, as a group, representing all of your employees, would ask that you make a contract with them as a Guild, to represent the members of the Editorial Department, would you be willing under those circumstances to make a contract which would include or call for membership, including any future employees in the Editorial Department? In other words, it would not affect anybody who is employed now, it would only affect those who are employed in the future.

35 MR. HUNTRESS, Sr: Of course, I don't know what kind of contract the Guild is going to submit.

MR. DIELMANN: I am speaking of this one contract.

MR. HUNTRESS, Sr: I think Mr. Berkowitz stated they were willing to submit another proposal.

MR. BERKOWITZ: No, that was a question, Mr. Huntress, but I don't think it was answered.

MR. HUNTRESS, Sr: I answered that.

MR. BERKOWITZ: I might be mistaken on that, I think we went over on another matter.

MR. DIELMANN: My question had reference to the first paragraph in your statement, in which you say it would not be fair or equitable when an employee was not a member of the Guild, the Guild would insist on the right of keeping him on. The question I asked was if all the members of the Editorial Department were willing to join the Guild and negotiated with you as a group, representing everybody in the Editorial Department, are you willing, or have you any objections, to a paragraph in there which would require that any future employees in the Editorial Department should become members of the Guild?

MR. HUNTRESS, Sr.: I think, as I said before, I have made it plain that the contract submitted was unreasonable, unwarranted and unacceptable to us. Isn't it clear enough?

MR. DIELMANN: Yes. I am only referring to the paragraph in which you take the position that some members of your Editorial Department may not be members of the Guild and could not be made to join the Guild.

36 MR. HUNTRESS, Sr: That is entirely a matter of another proposition, if you are going to make another proposition to submit.

MR. DIELMANN: Well, let's agree on what provisions, and have it understood that all members of your Editorial Department, assuming that all employees are now members of the Guild or would be willing to be members of the Guild, and that under the contract any future employees of the Editorial Department would be required to become members of the Guild and remain members in good standing.

MR. HUNTRESS, Sr: I don't believe we are getting anywhere, and I don't think we will get anywhere unless some other proposition is submitted.

MR. RAGSDALE: Mr. Huntress, we have only taken up this first clause and apparently are not getting anywhere on that. The Guild has submitted a proposition which it feels is a fair contract. As I stated at the last conference, the Guild is not trying to put anybody on the spot, but is perfectly willing to listen to reason. Would you be willing to submit a counter proposition?

MR. HUNTRESS, Sr: I think it is up to you all to submit a contract, if you so desire.

MR. RAGSDALE: Well, we have submitted a contract.

MR. HUNTRESS, Sr: Well, we have given you all our reasons, why it is unreasonable, and our reasons why it is not acceptable to us.

MR. RAGSDALE: In other words, we have to go out and get up a new contract that has got nothing like any of these clauses, and submit another contract.

37 MR. HUNTRESS, Sr: That is up to you all.

MR. RAGSDALE: The only thing I can get out of that, then, is that you are not willing to sign a contract.

MR. HUNTRESS, Sr: I didn't say that, did I?

MR. RAGSDALE: No, you didn't say it.

MR. DIELMANN: Let me ask this, Mr. Huntress, I think it will get down to some of the details of the contract: Would it be possible for us to discuss with you these various provisions, or with anyone you may designate, on a tentative proposition, with the various suggestions you have made, and on a tentative contract, and see if we could arrive at a contract? This way—I don't think you intend it that way—but your exceptions are so stated that we must assume the entire contract is not acceptable; and we haven't any way of finding out what paragraphs are acceptable or what changes would make them acceptable; in other words, the three of us are not in a position where we can do any negotiating so far as the actual terms of a contract are concerned; in other words, as an individual, if you have the time, I suggest to try out this contract and that contract, and just try to find out if you are in a position to accept a contract—a contract that would be acceptable to you.

MR. HUNTRESS, Sr: Well, I haven't anything further to say.

MR. HARRIS: (To the Reporter): Read the first paragraph of the objections.

The reporter read the first paragraph of the objections to the contract, submitted by Mr. Huntress.

38 MR. DIELMANN: In other words, my purpose is, can we find out by discussion what would be suitable to you and the Guild? In other words, we haven't anything to go by as negotiators. You say the contract is unacceptable, and we don't know on what basis we should submit a new one if this one is not acceptable.

MR. HUNTRESS, Sr: I think we give you a complete basis on the matter of any contract that you may submit. The only thing I can tell you is that I will give it due consideration.

MR. RAGSDALE: Then, you just state, Mr. Huntress, that is your answer to any contract that we submit?

MR. BERKOWITZ: No, no, I don't think he meant that.

MR. DIELMANN: No. As I understand your position, Mr. Huntress, it is this: You want us to come back and present a different contract to you. If you find that is the basis for discussion, you may discuss it; and if you tell us that that is unacceptable, then we will go out and come back with a third one.

MR. HUNTRESS, Sr: That is a matter entirely with you all. Mr. Berkowitz stated they may submit another contract, to which I say we will look it over and give it consideration. I don't see how we can get anywhere with this quibbling.

MR. BERKOWITZ: No, I am sure I don't want to quibble, and I don't think any of the employees who represent the employees of the Express are desirous of quibbling. Our function as negotiators is to help both sides and act for both sides as far as possible.

MR. HARRIS: Mr. Huntress, would you suggest the question as to whom they represent?

39

MR. BERKOWITZ: There was a letter mailed to Mr. Huntress notifying him of the appointment of us three from the Guild.

MR. HARRIS: How numerous was that signed? Have you the record, Mr. Hall?

MR. HALL: Yes, sir.

MR. HARRIS: I would like to see it.

(Mr. Hall handed Mr. Harris a paper).

MR. HARRIS: This is a letter signed by Mr. Potter.

MR. BERKOWITZ: Secretary of the Guild, dated the 7th of March.

MR. HARRIS: Where is the original letter?

MR. DIELMANN: I didn't quite catch your point.

MR. HARRIS: Mr. Berkowitz stated that you gentlemen represented the majority of the Editorial Department of the Express Publishing Company. I think the iteration or reiteration of that fact would at least justify some evidence—documentary evidence of that to go in the record.

MR. DIELMANN: You are correct on that. It didn't strike me as important—I had understood this to be a question of whether or not the Guild had notified Mr. Huntress that it represented a majority of the employees, and that the letter to the Express Publishing Company so stated. Am I right, Mr. Hall?

MR. HALL: Yes.

MR. DIELMANN: That is the presumption we went on, that the communication to the Express Publishing Company stated that the Guild represented a majority
40 of the employees. Now, we have this additional letter, which you may read, and then we will embody it in the record. (Handing paper to Mr. Harris).

MR. HARRIS: This is a sworn certification.

MR. HALL: You simply say thirty-one of the editorial employees.

MR. DIELMANN: I was under the impression that that stated a majority; I had personally made that inquiry, and I was sure that it did.

MR. HARRIS: This letter is addressed to you gentlemen, and not to the Company.

MR. DIELMANN: Does that satisfy your inquiry, Mr. Harris?

MR. HARRIS: Yes, sir.

The LETTER above offered by Mr. Dielmann is in words and figures as follows ,to-wit:

SAN ANTONIO NEWSPAPER GUILD

A Local of the American Newspaper Guild.

Post Office Box 871

San Antonio, Texas
March 14, 1938.

Mr. Henry B. Dielmann,
Mr. Sidney Berkowitz,
Mr. Frank G. Ragsdale,
Negotiators for the San Antonio, Newspaper Guild,
San Antonio, Texas.

Gentlemen:

This is to certify that thirty-one (31) employees of the San Antonio Express and San Antonio Evening News editorial departments are members of the San Antonio Chap-

ter of the American Newspaper Guild, and have
41 designated the Guild as their collective bargaining agent.

This number constitutes a majority of the employees of these two departments, according to my information.

This data is taken from official records of the San Antonio Newspaper Guild, which records are in my custody by virtue of the fact I am secretary-treasurer of the San Antonio Newspaper Guild.

(Signed) Cliff Potter

(SEAL) Signed and sworn to before me, a notary public in and for Bexar County, Texas, this 14 day of March, A. D. 1938.

(Signed) C. A. Goford,
Notary Public, Bexar Co. Texas

MR. BERKOWITZ: I evidently made a mistake—I do not mean it was a question of falsehood, but it was simply working under an illusion or allusion to a particular paragraph as I remembered seeing it.

MR. DIELMANN: I do not know off-hand the total number of employees in the Editorial Department; but that figure would represent more than a majority, wouldn't it?

MR. HALL: I don't think so—I don't know. I can check it.

MR BERKOWITZ: I would like to check it.

MR. DIELMANN: Of course, we would like to know whom we represent, so if you will be kind enough to check it,—we don't want to assume to act for the majority if we do not—we would appreciate it very much if you would do that, Mr. Hall, for our behalf as well as for your own.

MR. BERKOWITZ: It has reference to the employees since the Association started.

MR. DIELMANN: Yes, I suppose so.

MR. DENMAN: It would be immaterial whether you represented the majority or not.

MR. DIELMANN: Yes, I am sure you are correct about that, Mr. Denman.

MR. DENMAN: This Company has always negotiated with any number of its employees, down to even one, so it would not refuse to negotiate just on the ground that it was not a majority.

MR. DIELMANN: Of course, you understand our function, Mr. Denman. We are supposed to be representing the majority of all the employees in the Editorial Department, as required by the National Labor Relations Act, they are expected to bargain for the rest of them. Am I correct?

MR. RAGSDALE: Yes, sir.

MR. DIELMANN: In other words, we do not want to be understood as being here negotiating for a smaller group than that required by the National Labor Relations Act. If that be true in this case, then from our standpoint we will have to start negotiations all over and find out where we stand. Is that right?

MR. RAGSDALE: Go home.

MR. DIELMANN: I would not feel justified in taking up Mr. Huntress' time unless we are qualified to do so.

42 MR. BERKOWITZ: Can you check that and let us know, Mr. Hall? That is a point that to us is well taken.

MR. HALL: It is very easy to check it. We will check it for your information.

MR. BERKOWITZ: Yes.

MR. DIELMANN: Let me see if I understand the present status of the whole matter. Mr. Huntress has voiced his objections to the contract that we have presented here on behalf of the Guild. He says that we are at liberty to present a new contract if we care to do so.

MR. HUNTRESS, SR: Now, please correct that: If you all are willing to present another contract, that we are willing to give it consideration. We are not asking you to submit a new contract.

MR. DIELMANN: I am sure you misunderstood—

MR. HUNTRESS, SR: No, the statement you are just making, you know.

MR. DIELMANN: That statement I made was that we are at liberty to present a new contract.

MR. HUNTRESS, SR: Yes; that is right.

MR. DIELMANN: That is what I said. And until that is done, we are not in a position to negotiate in regard to the provisions of the contract which we have already presented. Is that correct?

MR. DENMAN: Mr. Dielmann has cross examined Mr. Huntress about whether they should present a new contract, and then undertook to summarize all he said in a conclusion, and asked if that is what he said. I do not think that is proper procedure.

44 MR. DIELMANN: I don't think your interpretation is correct, Mr. Denman. I am merely trying to arrive at where we stand now, so still my question to Mr. Huntress is the question of whether or not anybody on behalf of the Express Publishing Company would have authority to make the negotiations—that is, regarding the individual provisions of this contract—so that we could present a new contract if we wanted to; which I interpret as meaning that we are not given an opportunity to discuss the individual separate provisions of the contract which we have already presented?

MR. HUNTRESS, SR: No, that is not correct, for the reason that we have answered in general, the provisions of that contract.

MR. DIELMANN: Yes, that is correct. In other words, you are not at this time willing to discuss the provisions of this contract which we have presented, in detail?

MR. RAGSDALE: Well, Mr. Huntress has discussed it in his objections to the contract with the Guild. So far we haven't had an opportunity to answer those objections in detail, clause by clause, as he has contended; in other words, so far we have not engaged or negotiated on this contract as it is presented. We have merely heard Mr. Huntress' objections to it.

MR. HUNTRESS, SR: You have that right, to prepare a statement of the facts and present it the next time we meet.

MR. BERKOWITZ: At the next meeting, Mr. Huntress, would you care to state?

45 MR. HUNTRESS, SR.: Mr. Berkowitz, let me make a correction,—(to the reporter) that is, you can just take it down and cut it out, I just want to give the information to correct his remarks in his first statement at this meeting, I made reply to that, which I desire to withdraw.

(The reporter read the reply of Mr. Huntress to Mr. Berkowitz first remarks at this meeting, as follows:)

"MR. HUNTRESS, SR: Certainly, the Guild wouldn't want us to, or that means to discharge any member who is not a Guild member within the thirty days, which is in violation of the law there, as we say in that statement."

MR. HUNTRESS, SR.: That is the one I wanted stricken out. That is satisfactory to you, isn't it?

MR. BERKOWITZ: I couldn't see any objection to striking it out. As I see it, Mr. Dielmann and Mr. Ragsdale, the only thing that we can do is to present it back to the Guild and have them look it over and thoroughly undertake to note the exceptions that Mr. Huntress has taken to their contract ,and see what they wish to do.

MR. RAGSDALE: In other words, we will carry on these negotiations in writing, as I get it—that, as I understand it from what has been said, Mr. Huntress has made a statement in writing, and it is now up to us to make a statement in writing in reply.

MR. DENMAN: It seems to me that this afternoon's proceedings would indicate that is not correct, because there has been nothing stated by Mr. Huntress to that effect. Mr. Dielmann is here, as a lawyer, he had a
46 written contract which he submitted here and he asked whether certain things would be considered. No one would ever attempt to pass on a lot of oral words as the body of a contract, and there is nothing un-

reasonable in asking that if contract is not to be the basis, if you want to submit another written contract to comply with the objections that have been made.

MR. RAGSDALE: The objections there are so sweeping you could not write a contract that wouldn't violate them. As has been stated here, we haven't gone over any of the rest of the contract. Mr. Huntress has said we can submit out answers to it at the next meeting in writing; I believe that the transcript will bear that out.

MR. DENMAN: I don't think that anyone said you had to negotiate in writing. He did suggest that if you had a contract to submit, it should be in writing. I don't think you can expect to have an oral contract,—in other words, the contract should be in writing, but there is no requirement that the negotiations should be in writing.

MR. RAGSDALE: The point I have been trying to make is we have submitted a contract, and the only thing that has been submitted in reply is a sweeping statement that every clause in it is unconditionally, totally objectionable, and on that basis, it has died; and there is left the idea that we can submit another contract. What that contract may say I am at a loss to know; and until we find out what the attitude specifically is and have a meeting of minds on the different clauses of this contract, no contract could ever be arrived at.

47 MR. HARRIS: May I ask you gentlemen, and the attorney a question, and, knowing you as well as I do, expect a frank answer? That is, did you seriously expect that the contract you submitted would be not merely acceptable, per se—not merely accepted as a contract, but even as the basis of negotiation?

MR. DIELMANN: Mr. Harris, I think it was stated at the last meeting that the contract that was presented was a contract which was considered by the Guild as a model

contract, that it was recognized—for instance, the scale provided in there was one that should prevail under ideal conditions, and I think Mr. Ragsdale personally made the statement that we know at the present time such a scale would be out of question. At the same time, the Guild is probably taking the correct position, when they present a contract which it considers fair and an ideal contract, with the hope and understanding, of course, that its provisions will be the basis of negotiations, that by discussing the matter back and forth, we, as negotiators, will be able to arrive at a reasonable contract, as being reasonable, fair and acceptable to both sides. Now, as negotiators, we have nothing to negotiate if the contract we present is not considered as a basis of negotiating, regardless of what may happen to it during the negotiations; for instance, Mr. Huntress' objections that there is a provision—

MR. HUNTRESS, SR.: (Interrupting) You want to bring my name in as though the things I have been saying simply have not been proper.

48 MR. DIELMANN: I am simply referring to this statement, Mr. Huntress.

MR. HUNTRESS, SR.: All right.

MR. DIELMANN: If I misquote you, I want you to correct me. The word "unreasonable" is used in a number of places. We cannot possibly find out what would be reasonable, unless we negotiated; and it is rather difficult for us negotiators to be asked to come back with a new contract if nothing is going to be negotiated by it; In other words, we might continue the presentation of new contracts indefinitely, and never negotiate, but simply arrive at the conclusion that every one of them presented was not acceptable. That would be the sum total of our efforts. We feel that we could get somewhere, if we could actually discuss the reasonableness or unreason-

ableness of any of these provisions, and in that light, of course, that when the contract was presented that it would be considered—not that we are presenting this contract with the hope of jamming it down your throat, so to speak, or to impose it on you or anything of that sort. Our function is purely to negotiate, and we are not trying to tell you what kind of contract you should accept or not accept; and unless we negotiate, we are useless as negotiators, and I think your question as to the acceptability of a contract quoted orally is a perfectly good one, but to my way of thinking, the best way to find out whether it is acceptable or not acceptable is to discuss it and tear it to pieces, if you please, make the Guild bring you what might be reasonable under the circum-
49 stances. That is my position. I don't know how you two gentlemen feel about it.

MR. BERKOWITZ: I think you have expressed it adequately.

MR. RAGSDALE: I think so.

MR. BERKOWITZ: This checkmates all the efforts for negotiating this particular contract by virtue of the objections that have been taken, without a chance of discussing the provisions as noted in the contract; so we have no instrument on which to work.

MR. DIELMANN: Well, I think the biggest difficulty we are in is this, we have objections to the contract that has been presented, and, perhaps, silence on some of the provisions in that contract; we don't know if there is anything in the contract at all that is acceptable, or whether it is all unreasonable, we haven't any way of finding out unless we negotiate. I think, as a lawyer, Mr. Denman, you will admit that, won't you?

MR. DENMAN: No, Mr. Dielmann. I think your position is one which you might expect a layman to find some

plausibility in, but I am sure, as a lawyer, if I submitted you a contract and you pointed out to me the things in it that you could not agree to, that you considered wholly unreasonable, if I wanted to substitute some other contract as an alternative, you would certainly expect me to submit it in writing, because you know, as a lawyer that I would have to put it in writing and you would go off and sit down and study it before you could come to any conclusion concerning it; for instance, I venture to say if I sat here and recited to you orally a contract which I thought personally would be a reasonable contract, without examining the matter, you would not give me an answer to that oral recital as to whether you considered it reasonable or unreasonable, and whether the Guild would accept it—you wouldn't do it, you wouldn't have the ability, and I wouldn't, no other lawyer would, and certainly these laymen would not; and, therefore, I don't think no negotiation is had—unless people sit upon the witness stand, so to speak, and answer "yes" or "no" as to whether they would accept a certain oral statement as part of a contract, it is not reasonable; and I think this can have but one purpose—without meaning to be impolite—that is, in trying to trap someone into a statement that they won't negotiate. I think your definition of "negotiate" is unreasonably narrow; I do not say this in criticism—we are both lawyers, and it is natural for lawyers to play on words; but I think Mr. Huntress has pointed out here plainly and in writing, so it cannot be misunderstood, what is objectionable in the present contract. Now, as he said, he has not asked you this whole afternoon to pass upon whether you want to submit anything else; but you, as a lawyer, if you want to submit anything else, ought to be able to read what he said and decide whether you can comply with it in some other draft of contract.

MR. DIELMANN: How am I going to show how unreasonable a provision is, if I don't know why it is unreasonable?

MR. DENMAN: Well, for instance, he says in his objections to the contract, it is unreasonable to require or force people to join your Guild. 51
Now, that is plain, I don't think that needs any interpretation. Anyone can read that. He also says in another place it is unreasonable to require him to tie the company's hands with reference to whom it should employ. That is plain. I don't agree with you at all on the interpretations you made orally of this written contract in your opening statement, where you said it didn't affect the publisher's rights to employ and discharge, it says plain language, no employee shall be discharged; and it says in another place no employee shall be chosen except upon nomination of the Guild. It shows how important it is for anything to be in writing, because if we differ on anything that is in writing, it is much more likely we will differ on what we say in oral words.

MR. DIELMANN: I think your statements prove how important it is to discuss this matter by specific paragraphs, one after the other, because we do not seem to agree on what is in the contract. Unless we take the contract and discuss it, I presume there is nothing for us other than to throw it back to the Guild.

MR. BERKOWITZ: Yes, I think so.

MR. DIELMANN: (To Mr. Ragsdale) Is that your opinion, too?

MR. DIELMANN: We will be glad to take the matter up with the Guild, Mr. Huntres, and give them your objections. 52

MR. HUNTRESS, SR: All right.

Thereupon the meeting adjourned at 6:20 o'clock P. M.

53 THE STATE OF TEXAS }
COUNTY OF BEXAR }

I, HENRY L. GAZLEY, Court Reporter, do hereby certify that I reported the conference between the publishers of the San Antonio Express Publishing Company and the representatives of the San Antonio Newspaper Guild, as set out in the caption hereto, on Wednesday, March 30th, 1938; that my shorthand notes of the said meeting were afterwards transcribed into typewriting under my direction and that the foregoing on 28 pages is a full, true and correct copy of the minutes of said meeting.

GIVEN under my hand at San Antonio, Texas, this 2nd day of April, A. D. 1938.

COURT REPORTER.

54 EXHIBIT I

Read at a Meeting With Editorial Department Employees by Hall, Secty of Respondent, on April 4, 1938.

News Staff—3 p. m.

Express staff—4:30 p. m.

"We have called you to this meeting for the purpose of offering you further explanation and interpretation than perhaps you have received to date of a matter which vitally concerns each of you as well as ourselves. We have reference to the National Labor Relations Act, known as the Wagner Act. The first thought we wish to leave with you is this: Under the provisions of the Wagner Act an employee is not required to join a labor union, or to pay dues or assessments to any organization unless he chooses to do so of his own free will. Existing independent em-

ployment relations may be continued by the individual employee, or by employees as a group. In other words, while the Act provides employees with the right to self-organization, to form, join or assist labor organization and further provides employees with the right to bargain collectively through representation of their own choosing, the Act does not require nor force an employee to join any labor organization. The employee has the right to join or refuse to join any organization and is to be guided only by the dictates of his own free will. Whether the employee joins or refuses to join any organiaztion will have no effect whatever on his employment.

No one can compel you to join any organization and no one can prevent you from joining any organization.

The second thought we wish to leave you is this: An employer may hire or discharge or transfer employees to any task he may see fit, discharge an employee in the interest of efficiency, or even from personal animosity or sheer caprice, but employees cannot be discharged or hired for the purpose of influencing their right under this Act.

55 In other words, membership in any organization does not guarantee an employee that he cannot be discharged. He can be discharged just as readily if he has organization membership as he can if he does not have the membership. The only protection an employee has ever had or ever will have against discharge is to perform his work in a satisfactory manner and to conduct himself in accordance with the general rules and requirements of his employer.

The third thought we would like to leave with you is this: It has always been and always will be a policy of this company to provide as agreeable and comfortable working conditions as possible for our employees. Each of you has been in our employ a number of years and each

of you know that we have always endeavored to make your association with us as pleasant as possible and that we have always been interested in your welfare. As an illustration, each of you know we carried you through the depression rather than throw you out of employment, although our business did not justify us in doing so. Further, you know that we have carried some of you through sickness. Further, each of you know that it is our policy to give each one a vacation with full pay. All of this is done because of our interest in your welfare and to promote pleasant relationship between you and our company. Each of you know we were not forced to do this by any labor organization and no labor organization can force us to do these things.

Summing up, an employee cannot be forced to join a labor organization but it is a matter of exercising his own free will; membership in a labor organization does not guarante an employee employment; and,
membership in a labor organization does not
56 guarantee an employee the interest in his welfare by his employer.

We intend to give every consideration to Guild members and we want it understood that non-Guild members will also receive every consideration.

We hope we have given you some beneficial information and we appreciate your coming here for this meeting."

57 EXHIBIT J

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

April 6 1938

Mr. Thornton Hall,

Assistant to the President,

Express Publishing Company,

San Antonio, Texas.

Dear Mr. Hall:

Members of the Guild, being desirous of bringing about a mutually agreeable conclusion to negotiations with the Express Publishing company, believe that it might be helpful to them to have a copy of the statement of policy read at staff meetings Monday.

They feel that a careful study of that document might enable them to better understand the desires and wishes of the management, and that might result in their being able to suggest certain matters to their negotiators which can be used as a basis of reaching an agreement.

If it is not contrary to policy to ask that a copy of the statement be made available, the Guild would greatly appreciate having a copy sent to its officers.

Respectfully yours,

Cliff Potter, Secretary.

59 EXHIBIT K

April 7, 1938.

Mr. Cliff Potter, Secretary,

San Antonio Newspaper Guild,

San Antonio, Texas.

Dear Mr. Potter:

The statement read at editorial staff meetings last Monday, to which you refer in your letter of April 6th, was addressed to our two newspapers' editorial department employees as a whole, irrespective of Guild membership.

Enclosed is a copy of the statement in accordance with your request.

Very truly yours,

(Signed) Thornton Hall

Assistant to the President.

Thornton Hall/s

Encl.

copies.

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

59 EXHIBIT L

Dear Representative Citizen:

You are well known to San Antonio newspaper people, because you are often in the news—in fact, some times you make news.

For that reason the Newspaper Guild knows that you are the sort who would like to attend the first annual Gridiron Dinner staged in San Antonio.

Look over the enclosed Guild Reporter. It tells a lot about the Guild and the Gridiron Dinner.

Naturally we can't give you a complete synopsis of what is planned in the way of entertainment, but if you have read about the Washington Press Club's Gridiron dinners, you can get a rough idea about it.

The local politicians, and maybe you, will be on the pan, and they can take it, and we are certain you can too.

The tickets are priced mighty high—at $2.50 each, but they are worth it. This entertainment is not for the masses, anyway, it is for those who make the news, by those who write and edit the news—and—IT'S ALL OFF THE RECORD.

Mail your checks for tickets to the San Antonio Newspaper Guild, Post Office Box 871, San Antonio, and get your tickets by return mail. Or if you prefer, phone any reporter in town, employed by the Light, News, or Express, and give him your order.

San Antonio Newspaper Guild

60 SAN ANTONIO GUILD REPORTER

Vol. 1 San Antonio Texas P. O. Box 871 No. 4

April 13, 1938

EVERYTHING ALL SET FOR THE BIG GRIDIRON DINNER

Let's go, gang!

The gala event of the year is going to be held at the Gunter Hotel, Thursday, April 28.

Now that tickets are on sale and everything is well mapped out for the Guild's first annual Gridiron Dinner we've got to do some tall hustling and sell the public on the idea.

We're going to give San Antonio something they've never seen before. It's going to be the tops in entertainment and it's bigtime stuff, stupendous, teeming with laugh-getting episodes that will be talked about for a long time. We're going to dish out more good clean fun in one evening than the country's first-rate entertainers can hand out in weeks.

We'd be spoiling it all if we'd let the public in on what is actually on the bill for the night, but you can rest assured that some of our well-known city brethren are in for a bit of gentle roasting over the coals of well-defined and high-class burlesque. No use in telling who will bear the brunt of the dramatized bits of comedy but scouts from behind the scenes report that public officials, civic leaders and other citizens who break into print frequently are in for a share of gay ribbing. We don't know they're going to take it but we think they will get just as big a kick out of the affair as the John Citizen who sits on the sidelines without being caricatured. It will all be in fun so there won't be any hard feelings.

The scouts also disclose that the skits have been cleverly written by writers who know what the score is and that rehearsals have been going along in swell style. They report that some highly talented actors, both professional and amateur, have been engaged by Jeff "Belasco" Davis, director, and that Kleber Miller has done a mighty fine job of casting. The players fit their parts perfectly and some of them even look like the characters they will portray, the scouts say.

Of course, the spotlight of the evening will be mainly focussed on the comedy sketches, but that's only half the

fun. The evening can't be complete without dining and with the food that has been planned we believe that many vests and girdles will be unloosened during the colossal occasion. There'll be dancing, too! Sweet rhythmic strains of a dog-gone good orchestra will make everybody forget the discomfort of tight-fitting shoes. Of course, if somebody wants to do the Big Apple or the Susy Q, we'll get the band to accommodate them.

61

The newsmen in Washington who inaugurated the Gridiron Dinner idea now hold No. 1 spot in the entertainment world of Guild affairs but we've got an idea that we're either going to displace them or run a mighty close second.

All in all, gang, everybobdy's going to have a grand time and the affair will be well worth the two and one-half frogskins that's required for each one in attendance. Several Guildsmen have already sold plenty of tickets so how about the rest of you getting some results from your salesmanship training? If you haven't already obtained your tickets see Frank Ragsdale. He's got a fistful of 'em.

Let's all get going on this! There isn't an awful lot of time left.

ANOTHER EXPRESS-NEWS CONTRACT CONFAB HITS WALL

After a month of dickering with Publisher Huntress in an attempt to bring about negotiations for a proposed contract of Express-News editorial department workers, unit negotiators are arming with new weapons to induce favorable collective bargaining as guaranteed by the National Labor Relations Act.

Negotiators Sidney Berkowitz, Henry Dielmann and Frank Ragsdale were met with rebuff at a second meeting with officials of the Express Publishing Company held Wednesday, March 30, when Mr. Huntress branded the proposed contract submitted at a previous meeting as unreasonable and unacceptable.

Mr. Huntress refused to give reasons why the contract was unreasonable and unacceptable and also declined to outline what kind of a contract might be agreeable with him. When asked by the negotiators to submit a counter contract, the publisher suggested that another one be drawn up by the unit.

Refusing to discuss the clauses of the contract, Mr. Huntress claimed that the "Guild shop" was contrary to the National Labor Relations Act. It was pointed out, however, by Negotiator Ragsdale that the mechanical unions within the Express Publishing Company plant had such contracts.

Since the first conference with Mr. Huntress on March 14, the publisher has indicated that the present conditions on the two papers are in accord with those of other newspapers in the South and Southwest and that salary scales are also favorable.

The employees of the Express and News are asking mainly for a 40-hour working week with an increased salary scale. Last month, Publisher McIntosh of the Light signed a contract granting similar requests of his editorial department workers and expressed hope that Express-News employees would obtain better working conditions.

62 JOE DYNAN TO OKLAHOMA CITY

With regret the Guild announces that Joe Dynan, president of the local chapter and ace reporter for the Express, will extend his journalistic career on the Daily Oklahoman, morning sheet of Oklahoma City. At the same time we welcome "Swede" Henson, Chicago Herald-Examiner police reporter, into the fraternity. Happy landings, Joe! Hope you like us, Swede!

FRANK RAGSDALE NAMED GUILD PRESIDENT

Following Joe Dynan's resignation as Guild president of the local chapter, Frank Ragsdale of the Light, was elected to that post by acclamation of the members present at the April meeting held Sunday, April 3, in the Gunter Hotel. Ragsdale, former secretary of the chapter, will fill the unexpired term of presidency.

At the meeting an awards committee consisting of Stanley Ryan, Cris Meadows, Jr. and Frank Laro, was appointed. The committee will designate types of awards to be given local newsmen for best stories, pictures and headlines.

Fisherman Cliff Potter, after a heart-rending plea to the sporting blood of Guildsmen, succeeded in having the May chapter meeting postponed until Sunday, May 8. Potter and others are going fishing on the originally scheduled meeting date, May 1. It's the opening of the fishing season.

FIRST GUILD PICNIC PROVES SUCCESS

Chalk up another hit for successful Guild entertainment!

The first Guild picnic held Sunday, March 27, on the premises of J. J. Caperton, custodian of Olmos Park, was one of the most successful events ever sponsored by the local chapter. Indicative of frequent similar outings, the picnic was attended by approximately 50 members and their families who all contended that they had a swell time.

DUES SITUATION IS ACUTE

A report by Cliff Potter, secretary of the Guild, discloses that several members are sadly delinquent in their dues and many are faced with the possibility of losing their membership.

Stressing the importance of maintaining Guild membership in order to keep together the threads which so thoroughly wove together the organization more than a year ago, Potter urges that all members who are in arrears get in touch with him at once.

The Guild has been constructed for an important cause. We cannot let it totter at this time.

Keep your membership! Pay your dues!

63 EXHIBIT M

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

April 13, 1938

Mr. Frank G. Huntress,

Express Publishing Company,

San Antonio, Texas.

Dear Mr. Huntress:

The three negotiators representing the San Antonio Newspaper Guild desire another conference with you as soon as it is convenient.

As secretary, I have been directed to write you requesting that you set a date for said conference.

Very truly yours,

Cliff Potter, Secretary-treasurer.

64 EXHIBIT N

April 16, 1938.

Mr. Cliff Potter, Secretary-Treasurer,

San Antonio Newspaper Guild,

P. O. Box 871,

San Antonio, Texas.

Dear Mr. Potter:

In accordance with your request of April 13th, we would suggest Thursday, April 21st, 4:30 p. m. as a suitable date and hour for the meeting with the negotiators representing San Antonio Newspaper Guild. The meeting can be held in the Directors Room, seventh floor Express Publishing Company building.

Yours truly,

s/ Thornton Hall

Assistant to the President.

65 EXHIBIT O

Stenographic Report of

Meeting Held Between Officials

of the Express Publishing Company and

Negotiators designated by San Antonio Newspaper Guild,

Held in the Express Building at 4:30 o'clock p. m.

on April 21, 1938

PRESENT:

Thornton Hall,
M. M. Harris,
Officials of Express
Publishing Company.

Leroy G. Denman,
Attorney for Express
Publishing Company.

Frank G. Ragsdale,
Henry B. Dielmann,
Negotiators designated by
San Antonio Newspaper Guild.

Mrs. Alice Bonnett,
Ben Baines,
T. D. Higgins,

K. P. Miller,
Stanley Ryan,
Observers from San
Antonio Newspaper Guild.

T. H. Burger,
Court Reporter.

MR. HALL: Gentlemen, Mr. Huntress being out of the city we were glad to meet with you in accordance with your request.

MR. DIELMANN: Are you waiting for anyone else?

MR. HALL: No.

MR. DIELMANN: We have been requested to present to the publisher a statement from the members of the Guild, and I am asked to read it to you and then present it to you. I will ask Mr. Ragsdale to please read it.

MR. HARRIS: Do you want the minutes of the last meeting?

MR. DIELMANN: I don't think so.

MR. HARRIS: I looked at the transcript, and I think the minutes ought to be corrected.

MR. DIELMANN: May I suggest this. I have not seen the transcript, and suppose we postpone any correctness of the minutes of the last meeting, and if there are any corrections to be made we will do that at the next meeting.

MR. HARRIS: That is all right with me.

Mr. Ragsdale thereupon read the following statement:

"San Antonio, Texas,
April 5, 1938.

"The Express Publishing Co.,
San Antonio, Texas.

Gentlemen:

We transmit to you herewith statement of the San Antonio Express and Evening News Unit of the San
67 Antonio Chapter of the American Newspaper Guild in reply to a conference between the publisher of the San Antonio Express and Evening News and negotiators for the aforesaid unit of the Guild on March 30, 1938.

"The Express Publishing Company has rejected a proposed contract submitted by the Express and Evening News Unit of the Guild with the statement that it is unreasonable and unacceptable even as a basis for negotiations.

"Before entering a detailed discussion of this development we wish to emphasize the fact that no part of any contract that may be agreed upon orally during the process of negotiations between the publisher and the Guild is binding upon either party until it has been signed by the proper authorities of both the Express Publishing Company and the Guild.

"We regret that the publisher has seen fit to return the proposed contract. We take the position that the terms and provisions of a proposed contract are immaterial in so far as a basis for negotiations is concerned. We therefore request the publisher to go over the previously proposed contract with our negotiators, item by item, thereby

demonstrating to his employees his sincerity in collective bargaining.

"Thus the Guild is re-submitting the same contract with the request that the publisher enter into negotiations with the Guild, through its negotiators, and that negotiations be continued in a friendly spirit until the contract is thoroughly discussed, with the end in view that a contract mutually acceptable to the publisher and to the Guild will ultimately result.

68 "We feel that the publisher has been erroneously advised regarding the Guild, its aims and purposes, and that a few words in explanation of the local Guild's policy will result in a more receptive attitude on his part toward any Guild proposal.

"In the first place, the Guild does not feel that it is proposing a contract in which it takes all and gives nothing. The principal provisions of the proposed contract, if agreed upon, would result in a higher standard of living and a modicum of security for Guild members. Regardless of what industry it may be, any working agreement that provides a respectable standard of living and economic security for its workers will result in a higher morale among employes and a more efficient working force. We of the Guild feel that this is especially true in the editorial department of the newspaper industry, as editorial employes are required to maintain a social standing during both working and leisure hours that will permit them to make contact with every strata of society. This is not a matter of choice with editorial employes: it is an inherent requirement of their work, and yet the wages of editorial employees of the Express Publishing Company are far below the wages of other crafts in the organization which have no such social standing to maintain.

"Editorial workers are expected to keep abreast of the times so as to be able to cover the news with an intelligent

understanding. This requires the purchase and reading of magazines and books, all of which necessitate the expenditure of money.

69 "Again, a standard set of regulations and wages such as presented in our contract will, as time goes on, attract to the newspaper industry an increasingly higher caliber of employes.

"As to our attitude toward the publisher of the Express Publishing Company, we have always maintained the highest respect for his ability and for his integrity, and we trust that nothing will transpire to cause us to regard him otherwise. Our supreme desire is to negotiate with him in a friendly manner, and maintain a cordial employer-employe relationship.

"Regardless of what the publisher may have been told, we have no desire to embarrass or to injure the Express Publishing Company. It is to our best interest to aid and improve the company—certainly we have no desire to injure it.

"Neither do we have any desire to dictate its editorial policy. That is not in our province.

"We challenge any group of employes in the organization to show a higher degree of loyalty to the publisher and to the company than has been exhibited through the years by the employes of the editorial department. We appreciate the recognition of this loyalty by the publisher in "carrying" us "through the recent depression," as he reminded us in his latest communication.

"This, we wish to point out, was a mutual assistance. The depression was a disaster from which we all suffered and which we all fought together to end. During those years there was a depression of business and a depression

of wages, but there was no depression of news,
70 and we continued to process it at bargain rates.
We are not complaining of that, we are merely calling attention to it.

"The matter of vacation with pay and sick leave with pay was mentioned by the publisher in his latest communication. We have always been grateful for these considerations, which are customary in the business world, and we think there is no impropriety or lack of gratitude in our pointing out that they have been extended without expense to the Express Publishing Company. The only burden involved was that which fell upon the employes themselves who did the work of their absent colleagues so that they would have access to the same considerations.

"However, we see no reason why our belonging to the Guild, or the signing of a working agreement, should have any effect whatsoever on these matters.

"During a portion of the depression years, and until the present time, employes on the Express worked six days and were paid for five. During those years salaries were slashed from a point to which they have never been fully restored, although we were assured that all wage cuts would be restored as soon as business improved.

"In view of this assurance alone, our request for a $25 per week minimum for reporters can not be so very unreasonable, as this was the minimum that prevailed on the Evening News before the depression wage cuts.

"The editorial staffs of both the Express and the News are actually smaller today, due to recent reductions, than
they were during the depth of the depression.
71 Furthermore, editorial employees at this time are
working longer hours than during the depression.
We are now working six days a week with no limit on the number of hours per week.

"Our loyalty to the company has been maintained in spite of stress recently placed upon it. We do not believe that the publisher is aware of, or would countenance such a state of affairs. We have been ridiculed and intimidated by responsible executives of the Express Publishing Company, and by other persons of influence, who, by their acts, have placed the company, we think, in a position of having violated the National Labor Relations Act. We, however, have no desire to urge these violations unless driven to that end. As stated previously, our supreme desire is to maintain a cordial employer-employe relationship.

"The publisher, as revealed in the record of the conference between him and the Guild representatives on March 30, has taken special exception to the provision in the proposed contract that calls for the Guild shop. The publisher objected to this on the ground that it would cause him to violate the National Labor Relations Act.

"If this objection is valid, then he is violating the National Labor Relations Act every day with his closed shop agreements with craft unions in the mechanical departments.

"The Guild shop has been included in numerous contracts between Guild units and publishers throughout the country, and if the contention of the publisher of the Express Publishing Company is valid, it is too unreasonable to believe that some publisher, long before this
72 date, would not have taken advantage of such a technicality to invalidate the entire Guild Shop idea. It is significant that the legality of the Guild Shop has never been challenged in court. We have yet to hear of a publisher being charged with violating the labor act because of granting the Guild Shop.

"However, without prejudice to our rights, the Express-News Guild unit is willing to set aside for the time being the Guild Shop provision, with the understanding that it

will be re-considered after a contract embodying other provisions has been agreed upon.

"The provision in our contract asking for the stabilization of sick leave with pay is not in the least unreasonable, we believe, in view of the company's action in giving some employes more than we have asked for and others less than the company, in its first statement to the Guild, said it was its policy to give.

"To quote from the record of the March 30th conference, the publisher voiced the following objections:

" 'The proposed restriction upon the source and authorship of news and feature matter for these newspapers is utterly unreasonable and impractical upon its face.'

"We know of no proposal in the contract submitted by the Guild restricting the source and authorship of news. It is probable that a mutual misunderstanding exists on this point, which a free discussion of the proposed contract would eliminate.

"Regarding the proposal that photographers shall not be forced to act as reporters and that reporters shall not be forced to act as photographers, we wish to place emphasis on the word, "forced". Photographers and reporters of the Express and Evening News have always shown a willingness to serve in any possible capacity during emergencies, and we are sure they will continue to do so. However, we do not think that a healthy condition is engendered by a policy requiring an employe to perform a type of work for which he was not hired and for which he is not professionally prepared.

"As previously stated, we do not consider the greatness of the figures in our proposed salary scale as vital for the purposes of negotiations. They have been rejected as unreasonable, but just how unreasonable are they in view of

existing scales in other Texas cities, and in view of the statement of the publisher that wages now paid on the Express and Evening News compare favorably with wages paid on other daily papers in the South?

"We have proposed $65 per week for city editors, telegraph editors and heads of copy desks; $60 for assistant city editors, assistant heads of copy desks, copy readers and rewrite men; $60 for sports editors; $50 for society editors; $25 to $55 for reporters; $25 to $40 for morgue and library workers; $18 to $60 for artists; $25 to $55 for photographers; $17.50 to $22.50 for copy boys and $40 to $65 for editorial writers.

"Some of these figures are in excess of any we have found to exist on other Texas papers, and some of them are below scales now in force on other Texas papers. But regardless of any difference, the figures we proposed are proper for negotiation purposes.

74 "Bearing these figures in mind, the Houston Post pays its city editory $52.50 per week, his assistant, $48.80, reporters from $18 to $48.80, and copy boys from $12.50 to $15. This is for a five-day 40-hour week.

"On the Houston Press, where a Guild contract is in force, reporters are paid a scale ranging from $20 to $45 per week. This same scale applies for photographers, artists and society editors. Again, this is for a five-day 40-hour week.

"We regret that we have been unable to secure accurate figures on the wage scales of Dallas newspapers. However, the information we do have regarding those papers indicates that the wages paid in Dallas exceed by far the wages paid on the Express and Evening News. This is especially true regarding the Dallas News. It also indicates that the staffs of the Dallas papers are much larger than those of the Express and Evening News.

"The Fort Worth Star-Telegram pays news editors from $67.50 to $70 per week; copy readers and desk men are paid from $42.50 to $50, and reporters from $17.50 to $47.50.

"Right here in San Antonio the Light pays copy desk men of three years experience $40 per week; reporters, artists and photographers from $16 to $37.50; sports editor $55; society editor and morgue-keeper from $25 to, we understand, $35 and copy boys a minimum of $15. Again, this is for a five-day 40-hour week.

"We should like to point out in this connection that editorial employes of the Express and Evening News are re-
required to compete against a much larger and
75 higher paid staff. The Light employs ten reporters, the News four; and the Express eight.

"We might also add that the Light pays its city editor, picture editor, news editor, Sunday editor and sports editor a minimum of $50 a week.

"The picture editor is the only one of these who works six days a week, this is on account of his being Sunday city editor as well as picture editor. The bulk of his work, however, has to do solely with securing and editing art, a duty that the city editors of the Express and News are required to do in addition to their regular duties of editing.

"We should think that the publisher of the Express and Evening News would take pride in doing as well by his employes as his competitor, and we can understand no reason why he should not. Especially so in view of the fact that in a recent advertisement in Editor and Publisher it was enthusiastically announced, and properly so, that the Express and Evening News gained 1,211,981 lines of advertising in 1935 over 1934; 2,071,296 lines in 1936 over 1935, and 583 904 lines in 1937 over 1936.

"Even in Beaumont, a city of one-third less population than San Antonio, the Beaumont Enterprise and Journal, morning and afternoon papers of the same publishing company, pay their city editors $50 per week. Although their title is managing editor, their duties are the same as those of the city editors of the Express and Evening News. The Enterprise pays its news editor $35 per week; telegraph editor $30; sports editor $40; society editor
76 $25, and reporters from $32.50 to $45 per week. The Journal, the afternoon paper, pays its telegraph editor $31.50; sports editor $35 and reporters from $20 to $35

"And in Port Arthur, we are advised, the scale for editorial employees is from $7 to $10 per week higher than it is in Beaumont.

"These scales put to shame the wages now existing on the Express and Evening News. We do not believe that the publisher of the Express and News has, before this time, been apprised of the wide difference in remuneration paid his employes and those doing similar work in other Texas cities. Neither do we believe that his pride and sense of justice will permit such a discrepancy exist for long.

SAN ANTONIO EXPRESS AND EVENING NEWS UNIT,
SAN ANTONIO CHAPTER,
AMERICAN NEWSPAPER GUILD."

MR. DIELMANN: I would like to have that statement embodied in the minutes.

MR. HALL: Do you have an extra copy of it?

MR. DIELMANN: I do not have an extra copy here. That was the copy that was submitted to me with the request that I turn it over to you here.

MR. HALL: Then this is not being submitted to the publisher; It is being submitted here to be put into the record.

MR. DIELMANN: It is to be submitted to the publisher at this meeting, to be embodied in the minutes of the meeting, so this is really the copy for the publisher.

77 MR. HALL: It will be necessary for Mr. Burger to have that copy.

MR. DIELMANN: Is there an extra copy available?

MR. RAGSDALE: I should be able to get an extra copy later this evening.

MR. HALL: Are you presenting this statement in justification of the original contract that was presented?

MR. DIELMANN: That is right.

MR. HALL: May I suggest then that Mr. Burger be allowed to keep this copy until he has written it into the record of these proceedings, and then let us have the copy.

MR. DIELMANN: I might suggest this, Mr. Hall, if we can get an extra copy that has already been made, then we could turn that over to Mr. Burger and you could have the original for your purpose.

MR. HALL: That is quite all right. If you will let us have a copy of it, then we will accept it, to be presented to Mr. Huntress for consideration, possibly while he is out of town and for his further consideration when he returns.

MR. DIELMANN:: Do I understand that you want to submit this document to Mr. Huntress before there will be any further negotiating with reference to it?

MR. HALL: Yes.

MR. HARRIS: I suppose that Mr. Huntress will take that statement from you gentlemen and read it, and my assumption would be that he would prepare a reply. Although, of course, I am not authorized to speak for him in that particular. It strikes me that even assuming that a formal written reply will be forthcoming, it ought not to go into the record quite without comment on the part of the representative of the publisher.

78

MR. DIELMANN: I think that is entirely up to you gentlemen.

MR. HARRIS: After it has been offered by the representative of the Guild, as I say, I think it ought not to go into the record without comment on the part of the representatives of the publisher. I would like to call attention, if I may, Mr. Hall—

MR. HALL: Yes.

MR. HARRIS:—to a phrase in the introductory there: "We regret that the publisher has seen fit to return the proposed contract. We take the position that the terms and provisions of a proposed contract are immaterial in so far as a basis for negotiations is concerned." Now, these are the words I refer to: "We therefore request the publisher to go over the previously proposed contract with our negotiators, item by item, thereby demonstrating to his employees his sincerity in collective bargaining."

The implication of that is plain enough. I might almost say the innuendo is plain enough. The "sincerity," of course, raises a question of good faith. The words are practically synonymous. And I feel, as editor of these two newspaper and an employee of this company of some thirty years standing, that it might be well to apply the familiar rule of equity as to clean hands. I say this in all friendliness.

79 Mr. Ragsdale, you are president of the San Antonio Guild, aren't you?

MR. RAGSDALE: Yes, I am.

MR. HARRIS: May I ask you whether that mimeographed sheet you call the Guild Reporter is the duly recognized organ of your organization?

MR. RAGSDALE: It is.

MR. HARRIS: Mr. Hall, have you the copy of the last issue there?

MR. HALL: Yes. (Passing paper to Mr. Harris.)

MR. DIELMANN: I might correct one impression that your words, Mr. Harris, might leave, as to this document we are presenting to you. Of course, we are presenting it as a communication from the Guild, and it is not a communication from the negotiators personally as negotiators.

MR. HARRIS: It is from the Guild, but my very simple concern, Mr. Dielmann, is that it is going into the record.

MR. DIELMANN: Oh, I understand, but the negotiators are not responsible for the wording of it. I know you did not mean that, but somebody might get that impression.

MR. HARRIS: I understand, it purports to be and is a signed presentation by the Guild.

MR. DIELMANN: Yes.

MR. HARRIS: Although there is no signature here other than the typewritten title of the organization.

MR. DIELMANN: It is signed by the president, isn't it?

MR. HARRIS: No, it is not signed at all.

MR. RAGSDALE: I did not see it myself until
80 this afternoon.

MR. HARRIS: I think it might be well if it were signed by the executive or the secretary. It simply has that typewritten title of the organization.

Now, gentlemen, this is a copy of the San Antonio Guild Reporter dated April 13, 1938. On page two there is contained the following statement:

"After a month of dickering with Publisher Huntress in an attempt to bring about negotiations for a proposed contract of Express-News editorial department workers, unit negotiators are arming with new weapons constructed to induce favorable collective bargaining as guaranteed by the National Labor Relations Act.

"Negotiators Sidney Berkowitz, Henry Dielmann and Frank Ragsdale were met with rebuff at a second meeting with officials of the Express Publishing Company held Wednesday, March 30, when Mr. Huntress branded the proposed contract submitted at a previous meeting as unreasonabale and unacceptable.

"Mr. Huntress refused to give reasons why the contract was unreasonable and unacceptable and also declined to outline what kind of a contract might be agreeable with him. When asked by the negotiators to submit a counter contract, the publisher suggested that another one be drawn up by the unit.

"Refusing to discuss the clauses of the contract, Mr. Huntress claimed that the "Guild Shop" was contrary to the National Labor Relations Act. It was pointed out, however, by Negotiator Ragsdale that the mechanical unions with the Express Publishing Company plant had such contracts.

81 "Since the first conference with Mr. Huntress on March 14, the publisher has indicated that the present conditions on the two papers are in accord with those of other newspapers in the South and Southwest and that salary scales are also favorable."

And then follows a statement as to what the employees of the Express and News are asking, which is not material to my comment.

It strikes me that if a question or an issue or even an implication of sincerity or good faith is to be raised by the Guild, a similar question or issue might be raised in regard to this statement and publication and dissemination of this Guild Reporter. It contains misstatements as to fact. It also contains implications which are contrary to fact and contrary to the attitude of the publisher.

If the English language means anything at all to me, there are only two paragraphs or clauses in the publisher's statement at the last meeting which do not specify, which do not particularize. Two of them, I admit, are couched in general terms, generalities. The others are specific. The statement, of course, speaks for itself. Now, Mr. Ragsdale has just read a communication from the Guild which takes up and attempts to answer specifically objections on the publisher's part.

The statement that Mr. Huntress suggested that another contract be drawn by the unit, inasmuch as the original contract submitted was unacceptable and unreasonable, is directly contrary to the record as made by
82 Mr. Gazley at the last meeting of this group, and transcribed. If you will look in that transcript you will find that the suggestion of an alternative contract was made by one of you three gentlemen; that Mr. Huntress simply commented that if you cared to submit another contract he was willing to consider it. The suggestion did not come from him.

That is all, you might say, supplementary to the attitude of the Guild in publishing what I consider to be these misstatements, in publishing comments on negotiations and circulating that in the form of their organization journal.

I do not think any of you gentlemen will find since the beginning of these negotiations any comment in either of our two newspapers concerning the fact of the negotiations, the course of the negotiations or the matters in controversy between the two parties.

If a question of sincerity or a question of good faith is to be raised, I really think this publication is pertinent or raises such a question. Even if it were a piece of factual reporting, which it is not, the spreading of this hardly seems consonant with the attitude of negotiations between the parties. The equivalent on the other side would be if the Express or the Evening News should publish some editorial comment, just as this is disseminated in connection with the announcement of the Gridiron dinner and so forth, setting forth its attitude and why it objected to the proposition submitted by the Guild through the negotiators.

The question of the difference of opinion as
83 between the parties in regard to what or would not constitute a violation of the National Labor Relations Act is, of course, a matter of interpretation of the phraseology of the Act itself. There is less argument to be raised on that probably among ourselves than on any other point.

But I do say that this Guild Reporter contains a very flavored mistake as to fact, because the suggestions of an alternative contract was not made by Mr. Huntress, but it was sugegsted by one of the negotiators, and you will find that in the typewritten transcript of the last meeting. The phraseology is on all fours with the use of the implication as to the questionable sincerity in the publisher's attitude.

I can speak for myself, and I know I can speak for Mr. Huntress of my own knowledge, and I presume I can speak for Mr. Hall and the others who have represented the company in these negotiations thus far, that that contract was read section by section, clause by clause, and that the publisher's comment in the form of his first statement informing the negotiators that the terms were unacceptable and unreasonable necessarily meant that the contract had been read.

So that to say, either in terms or impliedly, that unless the publisher shall take up with the negotiators the original contract item by item his sincerity in demonstrating to his employees his willingness to bargain collectively is brought into question, I hardly think is a matter of good faith, and I hardly think it is fair. This is purely my view in the matter, because up to ten minutes ago I had not seen or heard this statement read.

84 I would like to repeat, for the purpose of emphasis, there are statements in this communication on behalf of the Guild which make specific answer to or comment upon specific objections raised by the publisher, so that he did not decline to give his reasons or his opinion in rejecting the proposed contract, and did not reject it merely with the statement that it is unreasonable and unacceptable.

Mr. Denman, at the last meeting, you will find his statement in the transcript, in very plain and even blunt terms suggested that certain questions put by one or more negotiators apparently were designed to trick the publisher into statements or the indication of an attitude of reluctance or unwillingness to negotiate. The correction that I was going to ask for in that transcript was due to the fact that the stenographer apparently stopped in the middle of my statement and reported only the first part of it, without reporting my words in conclusion. It was based upon a remark of Mr. Berkowitz, which is duly reported in the tran-

script, which was one of those long hypothetical questions with three or four parts, put to a witness. You as a lawyer know that when a question like that is put to a witness the part of the question he is apt to answer is the last part. That contained implication of unwillingness to negotiate on the part of the publisher. It did not take very much reasoning and no stretch whatever of the imagination to consider a statement couched in those terms as one offered with a purpose of putting the publishing company in wrong with the National Labor Relations Board, under the Labor Relations Act.

My own view of the matter, and I do not know
85 whether Mr. Denman, our attorney, or Mr. Hall, the publisher's assistant, share my view, is that the phraseology of this statement impliedly raises the question as to the publisher's sincerity in these negotiations, is of the same caliber as that statement I objected to.

I think you gentlemen will be the first to agree with me that it is incumbent upon me to do what I can to protect the publisher, just as it is incumbent upon you to protect the interests of those whom you represent. And I raise the objection in all good faith and sincerity, because I think that phraseology is objectionable and I think it ought not to go into the record at all unaccompanied by some explanation on the part of the spokesmen for the company.

MR. DIELMANN: Of course, the negotiators have no authority to make any change in the document that we presented at this meeting. However, we are glad to have any comment that you had to make on it. I might say this, not in the way of rebuttal or anything of that sort, but just by way of explanation, and I believe I am expressing the sentiments of the three negotiators judging from their attitude at last meeting and from their conversations since then, that the negotiators did not want to get the impression that the publisher was refusing to negotiate. In fact, the very questions that were asked the publisher were intended

to dispel that impression, by an answer from Mr. Huntress which would do away with any impression that anyone might get from reading the statement of facts of that meeting. I know that is my impression, that was my
86 purpose, and I believe Mr. Berkowitz in asking the questions which he asked had the same thing in mind. In other words, we, acting as negotiators, wanted to be able to report progress as far as negotiating was concerned. We did not want to go back to the Guild with anything that looked like a rejection or a refusal on the part of the publisher to negotiate. I can see that perhaps Mr. Huntress misunderstood the purpose of our questioning, and likewise Mr. Denman and yourself. But I do not think that we left here—or rather let me say this first: I do not think that any remarks or questions on our part were at all intended to place the publisher in any kind of an awkward position as far as his duties under the National Labor Relations Act are concerned. I think all three negotiators are prompted by only one desire, and that is to negotiate amicably with the publisher. I do not think there is any feeling against Mr. Huntress or against the Express Publishing Company, but that our sole aim is to open negotiations so that we can on both sides report progress after every meeting that we have. And I am sure that there was no attempt whatever on the part of any negotiator, not even remotely, attempting to trick the publisher into any statement which would be contrary to his best interests.

MR. HARRIS: When you go into the question of intent or into the question of motives, those are things which, unless you have absolute proof, are subject to deduction. Mr. Denman, have you the transcript in front of you there of the first statement of Mr. Berkowitz? One of Mr. Berkowitz' phrases was very unfortunately worded, one of his statements, so much so that I felt obligated to call
87 it into question, and it was because the stenographer did not complete the question I raised to clarify Mr. Berkowitz' remark, that I wanted the minutes of the past meeting corrected.

MR. DIELMANN: That is the reason I suggested that we go over the statement of facts, because I am not familiar with the wording of it as it appears in the record.

MR. HARRIS: Will you read that one statement there that I have reference to, Mr. Denman?

MR. DENMAN: The thing that Mr. Harris was calling attention to was this: Mr. Huntress first read his statement of the objection of the publisher to the contract that had been submitted by the Guild. Mr. Berkowitz asked if he could read the statement, and Mr. Huntress said yes. Mr. Berkowitz, after reading the document, the first question asked goes into the question of whether Mr. Huntress is refusing to negotiate; which seems rather odd to us, considering the fact that Mr. Huntress at a previous meeting was asked if he would consider a contract and he said he would. One was offered to him and he took it away for consideration, and he came bacak with a prepared statement setting forth what his objections were, and that statement was handed to Mr. Berkowitz and his first question was, "Would that particular status of each employe prejudice their right to bargain with you as a group?"

Now, if that had been the question asked at the first meeting it would have been a natural question to ask, because negotiations had not yet commenced. But Mr. Huntress had already said, "Yes, give me your contract and I will take it and consider it." And he had
88 considered it to the extent of preparing a statement about it and had handed it to you. And this was the next question—after being handed the document and reading it Mr. Berkowitz stated:

"In regard to the first part of the statement, (reading): 'That statute provides that an employee is not required to join a labor union, or to pay dues or assessments, to any organization, unless he chooses to do so of his own free will. Existing independent employment relations may be con-

tinued by the individual employee, or by employees as a group.'

"It was my understanding as negotiator for the Express Publishing Company's employees that the majority of the employees are members of the Newspaper Guild, and have so appointed the negotiators to act as their bargaining agent in the matter. Would that particular status of each employee prejudice their right to bargain with you as a group?"

Now, that cannot mean but one thing: "Mr. Huntress, are you violating the Wagner Act?" It is the only thing that you can do to violate the Wagner Act. In other words, are you going to discriminate against a man because he is a union employee? Nothing in Mr. Huntress' statement contained any such imputation. On the other hand, he said he would not discriminate against them in any way.

Now, Mr. Huntress made a reply to that question which showed obviously that he did not understand the question. His answer is omitted there, but it was afterwards shown on another page. Mr. Huntress made a reply which was wholly irrelevant to the question. The question was a little too complicated for him to catch orally. Mr.
89 Huntress' reply was "Certainly, the Guild wouldn't want us to, or that means to discharge any member who is not a Guild member within thirty days, which is in violation of the law there, as we say in that statement."

Then Berkowitz asked the following questions:

"Looking at it from the angle that the employees have presented certain things which they have asked you to pass upon, and which you have made a statement regarding, these employees see now and it is clear we have combined for the purpose of presenting their claims to you. Do you still think that on some basis you would refuse to treat

with them as a group; or do you object to the present contract and would prefer to have such things further explained or argued upon and negotiated about; or would you rather have them submit something in accordance with the exceptions that you take here?"

In other words, will you violate the Wagner Act? Now, all except the first question were just plain questions of a matter of fact, but the first one was out and out, "Are you going to violate the Wagner Law, Mr. Huntress, by refusing to negotiate with the union?"

Now, Mr. Huntress only answered the last one of that series of questions. He answered, "I think we stated our position clearly there. But if the Guild desires to present another proposition, of course, we will consider it." That is what Mr. Harris was referring to.

I would like, though, Mr. Dielmann, to call your attention to this: At the last meeting, and it is reiterated in this statement, there is a constant complaint that
90 the publisher has not specified his objections to this contract that was submitted; that he has just stated it was unreasonable and unacceptable and does not say why. Let me briefly go over this with you now and see if he does not do it, and do it paragraph by paragraph. You are here saying, "Let's take that contract paragraph by paragraph and tell us what is the matter with it." And you say that a test of the publisher's sincerity is whether he will do that. Well, it would be idle to say it is a test of his sincerity if he has already done it, and done it in writing, would it not?

MR. DIELMANN: Let me ask you a question. I believe that expression is used in connection with negotiations, if I am not mistaken. In other words, I think the argument is whether he would be willing to go over the contract paragraph by paragraph, and that that would be an evidence of his good faith to negotiate.

MR. DENMAN: Yes, but in your previous statement you undertook to define what you meant by negotiating. So far nobody has told us just what negotiate means. That is the thing that seems to be puzzling the courts at the present time. You stated to negotiate necessarily meant to say what was wrong with the contract item by item, and that we would not be negotiating unless we told you item by item.

MR. DIELMANN: I don't believe you go quite far enough. I think we stressed the point that we understood by negotiating that the different provisions of the contract would be discussed pro and con and some satisfactory solution of each item in the contract would be reached or determined.

91 At the last meeting, I have read this record very carefully and I am sure it is there, you asked if the publisher would not state what his objections were item by item.

MR. DIELMANN: I think that is correct.

MR. DENMAN: And when he kept referring you to his written statement on the subject you said if it was not taken up item by item and the objections given item by item you could not tell very well what his objections were, and that you did not think there would be any negotiations. And that was when I took you to task and insisted that it did so. I just made the conclusion that it did it item by item, and now I would like to see if I cannot demonstrate that to you. Here is Mr. Huntress' statement. His objections follow the order of the contract you submitted. His statement does not call them by number, he refers to them by subjects, but takes them down line by line through your contract. He says in his statement: "We have thoroughly considered the provisions of the contract submitted to us by the negotiators in behalf of San Antonio Newspaper Guild on March 14, 1938. We find the terms of this pro-

posed contract unreasonable and unacceptable." Now, that is a general term. Then he proceeds to take it paragraph by paragraph. He says, "The proposed requirement that the publisher set up a 'Guild Shop,' with employment conditioned upon the applicant's Guild membership, is contrary to the letter and intent of the National Labor Relations Act." That was the first paragraph of the proposed contract. Now, he does not stop at that point, he tells why the publisher thinks it is contrary to the letter
92 and intent of the National Labor Relations Act. He says, "That statute provides that an employee is not required to join a labor union, or to pay dues or assessments, to any organizations, unless he chooses to do so of his own free will. Existing independent employment relations may be continued by the individual employee, or by employees as a group."

Now, his statement first contains the statement that the proposed contract is not acceptable because it is contrary to the letter and intent of the National Labor Relations Act. And then it further specifies why it is contrary.

Now, you have indicated in your present statement that you do not agree with us, but you surely cannot say that he has not said why he objected to the contract. Just because you do not agree with his contentions does not mean that he has not given you his reasons. He has said why. And as Mr. Harris points out, you have found it answered because you have undertaken to answer him.

Now, the next—

MR. DIELMANN: Before you go to the next one, let me make this comment. You do not go far enough in stating our position. You are correct in the statement you made, based on what Mr. Huntress' statement contained. But our attempt to draw out Mr. Huntress had this purpose, that we wanted to discuss with him his objections. That was the reason on this very point I asked him the

question if all of the employees in the editorial department were willing to join the organization and they would become members one hundred per cent, if he would
93 be willing to recognize on that basis, and he refused to answer the question. In other words, he would not discuss his objections with us. That is why we say that our negotiations broke down, because we could not discuss the objections.

MR. DENMAN: In this Guild Reporter you have Mr. Huntress saying this, "Mr. Huntress refused to give reasons why the contract was unreasonable and unacceptable,"—refused to give reasons why it was unreasonable, you say. Now, in that first paragraph he has certainly given his reason as to why it was unreasonable. You may agree or disagree with the reasoning. I am not complaining of your not agreeing with him about reasoning, but all I am complaining about is any imputation that he did not give his reason.

Now, the next paragraph of Mr. Huntress' statement says: "The proposed contract calls for unreasonable restrictions upon the publisher's right of both employment and discharge in the conduct of the news department."

Now, the next paragraph, there are three or four provisions united there; one was that no new person could be employed until he was first nominated by the Guild. Now—

MR. RAGSDALE: I beg to differ with you on that.

MR. DENMAN: Well, it is a difference of opinion.

MR. RAGSDALE: It is plain English.

MR. DENMAN: It may be plain to you, but it would not be to me as a lawyer.

MR. RAGSDALE: Well, the thing I would like to do—

MR. DENMAN: Now, you complain about not discussing this thing, and then you don't let me talk.

94 MR. RAGSDALE: I am about to blow up here.

MR. DENMAN: You want us to talk, now don't complain if I say something about you.

MR. DIELMANN: As I understand it, we are merely discussing now the question that you raised about the matter of good faith, or are we now discussing the contract generally?

MR. DENMAN: What I say is plain. If you want us to talk we will talk.

MR. DIELMANN: Well, we were talking about correcting the record.

MR. DENMAN: I am not discussing correcting the record at all. My statement will speak for itself, Mr. Dielmann. What I am discussing is the complaint that the publisher has not given his reasons for his objections to the contract heretofore submitted. Now, in that contract there were a series of restrictions upon the employer's right that he now has of free employment and discharge. He now has the right of his own free will to employ or discharge anyone willing to work for him. The contract undertook to impose a series of restrictions on that. One was the stipulation, which I think is ambiguous and might be interpreted ether one or two ways, that before employing anyone the Guild should make the nominations or should have an opportunity to make the nominations. The second was that no person should be discharged, and there was no limitation in the contract that I could find as to how long that would last. The third was that this contract should run for a certain length of time, and at the expiration of that time

if the parties would try to negotiate a new one
95 and they did not succeed in a new one it would stay in effect in perpetuity until they did negotiate a new one.

Now, let us see if Mr. Huntress did not state in his written statement to you what his objection to that was. He says, "The proposed contract calls for unreasonable restrictions upon the publisher's right of both employment and discharge in the conduct of the news department." It seems to me that nothing could be plainer, when he says those three restrictions would be restrictions he could not afford to accept.

MR. DIELMANN: Would you interpret that, then, to mean, Mr. Denman,—the statement I am talking about now,—that that would be a rejection of that contract paragraph by paragraph?

MR. DENMAN: Yes, I would say it was. It was not one paragraph, it was three together dealing with that subject.

MR. DIELMANN: Now, you see, if we understood that we would be getting somewhere.

MR. DENMAN: Mr. Dielmann, I would think that a child would understand that.

MR. DIELMANN: I am glad you make that statement, because that clarifies the record. We can then consider those paragraphs rejected?

MR. DENMAN: Yes. Now, let's take the next. Mr. Huntress says in his statement: "It also would undertake to tie the publisher's hands as regards salary-scales in relation to the condition and conduct of the business." Now, then, the contract had set out a set of salary scales. It pro-

vided that those could never be altered except on
96 the consent of the Guild. He says that stipulation would tie his hands in relation to the condition and conduct of the business. In other words, costs might double and the owner could not change his salaries. Income might drop to half and he would have no power to change his salaries. Conditions might change and an employee might become worth only half as much, and the publisher could not change his salary. It is plain to see that if he cannot change his wage scale except with somebody else's consent his hands would be tied.

MR. DIELMANN: Isn't that true of his other employees?

MR. DENMAN: I am not undertaking to discuss that here. I am Mr. Huntress' attorney. I do not make contracts for him or for the company. I have no authority to do that. But you raised the question of the interpretation of this document, stating that it did not give his reasons and I am answering that it does give his reasons. Now, whether his reasons are the best reasons or whether yours are the best reasons is for the representatives of the Express to say, those who have the power to bargain for the Express. But I am just their attorney. I will say for myself that I do not think that any man should be in a position like that forever, where the contract is in perpetuity. I never saw a contract with such a provision in it.

MR. DIELMANN: Well, that is a matter of interpretation. We might differ on the interpretation of the contract in that respect.

MR. DENMAN: But as to whether it is reasonable or unreasonable, I am speaking for myself personally, and I would consider it unreasonable.

97 Furthermore, he says that in several instances it would require pay for employees without work-

ing. The contract provides that people who were sick or left the employ of the company or were discharged, that their pay should go on regardless for a certain length of time. For instance, if a man was discharged for however good cause he would still draw his salary under some provisions of the contract for several years, as I remember it offhand, at any rate for a considerable period of time. Mr. Huntress' answer to that is that he does not think that is reasonable, and gives as his reason for it that it would require him to pay someone without getting value received, without the man doing anything for the pay. He gave his reason. You cannot say he did not give his reason for it.

Then the next objection was the proposed requirement of written notice stating the cause of an employee's dismissal from the publisher's employ. Mr. Huntress states that is contrary to the rights accorded by the Texas constitution, as decided by the Supreme Court of this state. You are familiar with the history of that, Mr. Dielmann. We had a statute in Texas once that provided that a man must always give a reason when he discharged an employee. I think it led to more libel and slander suits than any other statute that was ever passed in Texas. Every time a man was discharged he would demand a reason, and if the employer said, "I discharge you because you are incompetent," he faced a suit in court for slandering the man in his ability to carry on his profession. And finally employers began to refuse to state the reasons. They were prosecuted, and the Supreme Court held that the
98 bill of rights as to freedom of speech included the freedom to be silent, and that no one could make a man give his reason and that he had a right to be silent on that subject.

Now, I say I think it is stated here very plainly why that provision is unreasonable.

I won't go all the way through, because if I do we will owe Mr. Burger too much money. I will say, in all fairness,

that this constant attack that you have made upon the good faith of the publisher in not telling his reasons for objecting to this contract is not a fair attack upon the publisher.

MR. DIELMANN: You are now referring to this statement in the Guild Reporter?

MR. DENMAN: I am not referring to that alone, but to both that and the document here that was read at this meeting.

MR. DIELMANN: I do not recall any reference of that kind in this document.

MR. DENMAN: It says that it is impossible to negotiate if the publisher is not willing to go over this item by item. The statement in the document is this: "We therefore request the publisher to go over the previously proposed contract with our negotiators, item by item, thereby demonstrating to his employees his sincerity in collective bargaining." He did go over it item by item and has given his reasons in writing. As a matter of fact, I think he exercised very great restraint in his criticisms of it.

I want to call attention on the matter of good faith and fairness to the difference in the restraint of the publisher and the restraint of the Guild and the negotiators.
99 Until this question of sincerity was expressly raised there had not been one word of criticism of any kind on the part of the employer, none of any kind. Even in discussing the contract, we did not discuss the obvious fact that the contract did not say one single thing that the employee ever agreed to do. It did not even say he agreed to work for the money he was going to get. It did not say anything about what he was to do, but it was a number of pages long about what the employer should do. But things of that sort were omitted from the rejections, in order to make the statement a dispassionate one, one that was—

MR. DIELMANN: Mr. Denman, if they had attempted to say what the employee was supposed to do it would have been dictating to the employer what the duties of the employee should be, would it not?

MR. DENMAN: No, I would say ordinarily the general employment contract says that during the time of his employment the employee will serve the employer faithfully, exclusively and diligently. That is the language we find in all the labor contracts. There was no such language in this. The only thing in it was that he could work for anybody else he pleased at the same time.

MR. RAGSDALE: I don't think the Express publishing Company has a labor contract in effect that has anything like that in it.

MR. DENMAN: With reference to the other contracts, on several occasions you have answered Mr. Huntress' objection to this contract with the statement that if the publisher objects on the ground that it would cause him to violate the National Labor Relations Act, then he is violating the National Labor Relations Act every day with his closed shop agreements with craft unions in the mechanical departments. The obvious answer to that is, if it were true, two wrongs never made a right. So your answer would not be a logical one. But I think we all know that the other contracts were made prior to the passage of the Wagner Act, so I do not see how they could be in violation of any of the terms of that Act.

MR. RAGSDALE: May I make a statement?

MR. DENMAN: Yes, surely.

MR. RAGSDALE: If the Express Publishing Company can read into this statement of sincerity any intent of the Guild to now or previously question the sincerity of the publisher, I say if you can, then I deny that it is there. It

is perfectly fair for the Guild to assume most of the things that are in this letter which went to the Guild members. Possibly some few of them went to others, I don't know. I say I deny that there is any intent to question the sincerity of the publisher. In my mind there never will arise a question as to his sincerity. I believe that he is sincere and I have stated so previously in these conferences. All we want to do is to get out of the law court. This is a human problem. There is no intent of the Guild to pin the publisher down to something that he does not feel he can honestly go into. I insist that whether it is in so many words or not, the publisher has not given his reasons, in view of the fact that he has shut the door to our reasons. In other words, the publisher says, "Well, this is all out,"
and we say, "Well, we would like to show you why
101 we think that you are wrong." He says, "No, you have my answer." In this answer that is in here, Mr. Huntress says flatly that something is unacceptable because of a reason. Well, any logical reading of the contract, I believe, will demonstrate to Mr. Huntress that he is under a misconception with regard to that clause. And so I am completely convinced that there are no negotiations until both sides have had their chance to say frankly what they think. We have not had a chance to go over it and show him in all friendliness why we think that is right and why we want it, why we think that will be to his advantage to have it the same as to ours. And personally I would be the last man to want to sign a one-sided contract with anybody, either to my own advantage or to the other fellow's. All we want to do is to get out of the law court and quit quibbling about words and get into the spirit of what is fair and try to arrive at an understanding.

MR. HARRIS: Mr. Ragsdale, will you let me give you something that is not quibbling?

MR. RAGSDALE: Yes, sir.

MR. HARRIS: I think this is going to be just as acceptable to you as the negotiator, and as president of the Guild,

and to your associates among the boys, and to Mr. Dielmann and to Mr. Berkowitz, if he were here. In fact, I am going to ask my colleagaues, Mr. Hall and Mr. Denman, to join me in this request, even though the publisher is two thousand three hundred miles away from here. Will you get the minutes of the first meeting containing Mr. Huntress' statement, that very brief statement? There is something in this statement of the Guild
102 today that is anything but a quibble, and I am going to take it in good faith and answer it with anything but a quibble. As shown by the transcript of the meeting of March 14th, on page three, Mr. Huntress is speaking and reads this statement:

"The publishers and the editors of the San Antonio Express and San Antonio Evening News always have maintained, strictly and genuinely, just and impartial relationship toward the employees of the news and editorial departments of these two newspapers.

"No holder of, or applicant for, employment in those departments has been retained or engaged upon any consideration of his membership or non-membership in any union. He has not even been questioned by the publisher, nor by any responsible editor, as to membership in such union.

"The Express Publishing Company and its responsible editors desire and intend to continue to conduct its news and editorial departments strictly upon the same fair and impartial basis."

Those are the only passages of that former statement which are germane to what I am about to propose. Now, about the bottom of page four of this statement which Mr. Ragsdale read today occurs this paragraph:

"Our loyalty to the company has been maintained in spite of stress recently placed upon it. We do not believe

that the publisher is aware of, or would countenance such a state of affairs. We have been ridiculed and intimidated by responsible executives of the Express Publishing Company, and by other persons of influence, who, by
103 their acts, have placed the company, we think, in a position of having violated the National Labor Relations Act. We, however, have no desire to urge these violations unless driven to that end. As stated previously, our supreme desire is to maintain a cordial employer-employee relationship."

May I suggest and propose to you, Mr. Hall and Mr. Denman, that you join me in a request to Mr. Ragsdale and Mr. Dielmann to obtain from the Guild a statement of these instances referred to in this statement, and to submit it to us?

MR. DENMAN: I think that ought to be done. I do not think anonymous accusations are fair.

MR. HARRIS: I do not think any one of you who knows me at all will question my sincerity in the matter.

MR. DIELMANN: I will, of course, convey as one of the negotiators any request that you make to the Guild, regardless of what it is. I would like to express this personal opinion, that as a negotiator, of course, I have no authority or no inclination to act as a board to pass upon matters of that kind. I think if there are to be threshed out, they ought not to be threshed out by negotiators. The negotiators are attempting to negotiate a contract with the Guild members and the publisher. I think if there are complaints they ought to be submitted to some other tribunal rather than to these three negotiators. I believe it is outside of the province of what I am here for as one negotiator. I see your position and I think you have a perfect right to make that request, but I do not think the purpose of the three negotiators in coming here to you, as we did

in the first meeting and the second meeting
104 and the one today, is to have a hearing on grievances. Do you understand my idea? Now, if that matter is to be threshed out, I do not think we, as negotiators, are the parties to have anything to do with it.

MR. DENMAN: But you, as negotiators, have presented that accusataion here; one of your negotiators being president of the Guild. I do not mean the accusation was made by you, but it was transmitted by you, and having been transmitted we must make our answer in the same way.

MR. DIELMANN: I am willing to submit back to them any request with reference to the matter, but I do not think the three of us, as negotiators, should have anything to do with passing upon the justness or unjustness of these accusations.

MR. HARRIS: Do you misunderstand me, I am not asking you to. You, as a negotiator, and your colleague, Mr. Ragsdale, who in addition to being a negotiator is also president of the local Guild, have in your capacities as negotiators presented this statement to this Board with the request that it be made a part of the record. Now, this record contains a very grave and very distressing accusation, namely that responsible executives of the Express Publishing Company, and other persons of influence, by their acts have placed the company with them in a position of having violated the National Labor Relations Act. Now, I am, merely as a matter of routine procedure, asking you as negotiators who have submitted this statement, to request your principals to give us a bill of particulars. I think your presentation of this statement with the request
105 that it be made a part of the record gives us a right to ask for a bill of particulars. Am I right about that?

MR. DENMAN: I think it would only be fair.

Mr. DIELMANN: I am going to make the request, that is all I can do.

MR. HARRIS: In other words, the statement by Mr. Huntress in his first communication to this group in relation to the fair and impartial treatment of employees without regard to Guild membership or non-Guild membership, is directly controverted by this paragraph; and, as I said at the outset, I think it would be just as fair to your principals as it would be to our company to have that thing clarified and have that bill of particulars submitted to us for Mr. Huntress' examination, because when a statement is made that something constitutes a violation of a law I believe it is sufficiently serious and sufficiently grave to call for an itemization. And I really do think that the Guild officers, or responsible Guild members who are in position to supply first hand information, whether or not they desire to accompany it by affidavit is a matter for them to decide, ought to let us have that bill of particulars. I speak for myself, and I think for Mr. Hall and Mr. Denman, and I feel Mr. Huntress would very much like to have it. I do not think that from this responsible editor of the publisher a boy or girl around here who belongs to the Guild has ever heard one word of criticism or suggestion of criticism.

MR. RAGSDALE: Being familiar with at least one case, as president of the Guild I do not believe that I would entertain a request for that information from anybody except Mr. Huntress, because of the nature of one of the cases. I do not think it would be fair to him to entertain it.

106

MR. HARRIS: Mr. Denman is Mr. Huntress' attorney, he is attorney for the Express Publishing Company.

MR. DIELMANN: Do I understand you gentlemen are speaking for Mr. Huntress? You are making the request for the publisher?

MR. DENMAN: Yes, but if Mr. Ragsdale says he wants Mr. Huntress' personal request, that is perfectly proper.

MR. RAGSDALE: In this particular case I would not entertain it except from Mr. Huntress.

MR. DIELMANN: Would it be agreeable to you gentlemen to have that request made by Mr. Huntress, and then have us take the matter up?

MR. HARRIS: Yes, I just as leave it would come from him. I believe that is another instance to justify my request that a bill of particulars accompany the insertion of that statement into the record.

MR. DENMAN: I think it was unfortunate to make a statement like that in the course of the negotiations. I am falling into the error that I think Mr. Ragsdale feels that we two lawyers, Mr. Dielmann and I, are falling into, —discussing things from a legal point of view, but whenever anyone comes to me and says, "I want to make a trade with your client. I think he has violated some law, but I am not going to prosecute him if we come to an agreement,"—

107 I cannot look upon that as but one thing, to use that threat of prosecution to force a man to agree. I always think that is unfortunate, but I will assure you that personally I won't take it into consideration.

MR. RAGSDALE: I think the intent here was to say that there were threats and intimidations, but not threats that the Labor Board would be appealed to, on those grounds, to enforce the contract. I know as far as I am personally concerned I would never sign a Labor Board charge, as president of the Guild, on that basis. I think this merely points out that ridicule and intimidation has been practiced, which is contrary to what has been made in statements from the publisher; and that if those threats finally drove the Guild members to it they would be forced

to file Labor Board charges for that reason, and not as any act to force the signing of the contract.

MR. HARRIS: You can see very easily where it would be susceptible to the interpretation Mr. Denman has put on it.

MR. DIELMANN: Yes.

MR. HARRIS: And I am very frank to say that if it is the judgment of my principal, Mr. Huntress, with or without the advice of counsel, not to call for a bill of particulars under that statement, it ought to be requested in all fairness that that paragraph be stricken out of the statement, as a matter of record. You say that there is no ulterior design, that you have no idea of making a record for the National Labor Relations Board, but if a statement like that, unattended by particulars, unattended by evidence, is permitted to get to the National Labor Relations Board, who would be held responsible for the condition?

108 MR. RAGSDALE: As some evidence of the sincerity of the Guild, I would like to say that when we were negotiating with the San Antonio Light, and I don't think there would be any objection to the same procedure here, at one of the first conferences we made an agreement that anything that arose in the negotiations would be kept to the negotiations and would not be used by either side in any further proceedings. Now, I don't think as far as any threats as to the National Labor Relations Board is concerned, if we are willing to go that far, I think it ought to show our sincerity, that we believe the publisher is sincere, and all we want to do is to sit here and talk the thing over and get our side of it as well as the publisher's side into the record.

MR. DENMAN: We would not expect you to make any agreement whereby if you had any rights to present to the Labor Board you would waive them.

MR. RAGSDALE: Get me straight, I am not waiving any rights to go to the Board, but just agreeing that anything said in the discussion of the negotiations was a sealed book.

MR. DENMAN: Let me make this suggestion, that we take this statement that you delivered to us today, and Mr. Huntress, who went to attend an Associated Press meeting, will be back in about a week I understand. As soon as he gets back give him time to consider it carefully, and get in touch with you. It is unfortunate that he had to go during these negotiations, but he had no choice, he had an important meeting in New York.

MR. DIELMANN: Let me make this further
109 suggestion along that line. Frankly, if I did not feel like I could be of some service in bringing both parties to this negotiation any step further I think I would be wasting my own time as well as everybody else's time. It is perhaps unfortunate that this statement is in this particular document that we have presented today. Now, if you gentlemen would agree to it and if the Guild would agree to it, that we eliminate that paragraph by agreement and just simply let the matter be considered as though it had never been embodied in there, so that it will not have any influence on the progress of the negotiations, I, as one negotiator, would very gladly make that recommendation to the Guild.

MR. DENMAN: I don't think anything of that sort in there would affect Mr. Huntress a bit in the negotiations. He is not the type of man that is affected by these byplays and things of that sort. He is above them all. He has been struggling too many years to keep the Express at the head of everything, and his employees in harmony and so forth, to let anything of that sort affect him one way or the other.

MR. DIELMANN: The purpose of my suggestion is this, that it, of course, raises a question of the relations between the employer and the employees. And, as Mr. Harris said, it does contradict a statement Mr. Huntress made at the very first meeting. Now, I don't think that even though Mr. Huntress may be correct and this statement may be wrong, or let's take the other side of it, this statement may be correct and Mr. Huntress may be mistaken, I don't think it should have any influence on the progress of our negotiations. My purpose is to eliminate any cause of friction that might throw a monkey wrench into the negotiations when there is a chance of discussing these matters and arriving at a satisfactory solution. And personally I would prefer to see that done rather than for us to spend a lot of time discussing matters which really are extraneous to the contract we are presenting.

MR. DENMAN: I think that is a matter entirely within your control.

MR. HARRIS: I have just one thought, and that is that that statement goes into the record.

MR. DIELMANN: Well, I don't think that anything that arouses personal feelings, we are all human beings, would help these negotiations.

MR. DENMAN: It is your statement and I think you naturally have control over whatever you want to say.

MR. DIELMANN: Well, you have made a request and naturally I have got to comply with your request and submit that to the Guild. At the same time, if you would agree that we should disregard this paragraph or eliminate it it would make your request unnecessary. That is the point I want to bring out.

MR. DENMAN: What I mean to say is that you do not have to have any agreement from us. I think you always have a right to make your own statements in whatever form you please. I think if you want to change the statement in any way, that would be entirely in your own control.

MR. DIELMANN: It would not be a change by me, of course.

111 MR. DENMAN: Well, I mean the Guild.

MR. DIELMANN: What I want to know is, if the Guild should be willing to eliminate that paragraph are you gentlemen satisfied?

MR. DENMAN: Yes, I think that is a matter of right on their part. We would have no choice in it. I think they have a right to make their own statement as they see fit.

MR. DIELMANN: My point is this, then, I can take it up with the Guild members and if they should decide to eliminate that paragraph it would be unnecessary for you to communicate your request and have him make the request then of us. On the other hand, then, it would be a matter of presenting this document as corrected to Mr. Huntress when he comes back from New York.

The meeting thereupon adjourned sine die.

112 I, T. H. Burger, court reporter, hereby certify that I was employed to, and did, take down in shorthand the proceedings had at the meeting between officials of the Express Publishing Company and the negotiators for the San Antonio Newspaper Guild, held in the Express Publishing Company Building, beginning at 4:30 o'clock p. m. on the 21st day of April, 1938; and I further

certify that the foregoing 47 pages contain a full, true and correct transcript of all proceedings had at said meeting.

Witness my hand this 28th day of April, A. D., 1938.

T. H. Burger,
Court Reporter.

EXHIBIT P

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

May 3, 1938

Express Publishing Company
San Antonio, Texas.

Gentlemen:

The Guild, upon request of the San Antonio Express-Evening News Unit, desires to withdraw a paragraph of the Express-News Unit's statement read into the record at the last conference.

The paragraph withdrawn is Paragraph 20, reading as follows:

"Our loyalty to the company has been maintained in spite of stress recently placed upon it. We do not believe that the publisher is aware of, or would countenance such a state of affairs. We have been ridiculed and intimidated by responsible executives of the

Express Publishing Company, and by other persons of influence, who, by their acts, have placed the company, we think, in a position of having violated the National Labor Relations Act. We, however, have no desire to urge these violations unless driven to that end. As stated previously, our supreme desire is to maintain a cordial employer-employee relationship."

This paragraph is withdrawn for the reason that it has been erroneously construed by Company representatives as threatening Labor Board charges in the matters cited if a contract was not negoti. ed. This certainly was not the intention of the Unit or the Guild.

Very truly yours,

The SAN ANTONIO NEWSPAPER GUILD

Frank G. Ragsdale

President.

114 EXHIBIT Q

May 4, 1938.

San Antonio Newspaper Guild,
P. O. Box 871,
San Antonio, Texas.

Gentlemen:

Attention Mr. Frank G. Ragsdale
President

This acknowledges receipt of your letter of May 3rd requesting the withdrawal of a certain paragraph from the statement presented by San Antonio Express and Evening News Unit, San Antonio Chapter, American Newspaper

Guild, at the last conference between the negotiators for the Guild and representatives of the Publisher.

Yours truly,

Signed Thornton Hall

Assistant to the President.

115 EXHIBIT S

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

May 16, 1938

Mr. Frank G. Huntress, Publisher,
Express Publishing Company,
San Antonio, Texas .

Dear Mr. Huntress:

The Express and Evening News unit of the San Antonio Chapter of the American Newspaper Guild requests a conference between you and the unit's negotiators at the earliest convenient date to ascertain your reaction to the unit's communication to you delivered April 21.

The negotiators will also be glad to discuss any other matter you think pertinent.

Very truly yours,

Cliff Potter, Secretary,
San Antonio Newspaper Guild.

116 EXHIBIT T

May 17, 1938.

Mr. Cliff Potter, Secretary,
San Antonio Newspaper Guild,
San Antonio, Texas.

Dear Mr. Potter:

Replying to your letter of May 16.

Inasmuch as Mr. Huntress will be out of the city the remainder of this week, we would suggest Monday, May 23rd, 4:30 p. m., seventh floor of Express Publishing Company building, as a suitable date and place for the conference requested by you.

Very truly yours,

Signed Thornton Hall

Assistant to the President.

117 EXHIBIT U

Stenographic Report of

Meeting Held Between Officials

of the Express Publishing Company and

Negotiators designated by San Antonio Newspaper Guild,

Held in the Express Building at 4:30 o'clock p. m.

On May 23, 1938

PRESENT:

Frank G. Huntress,
M. M. Harris,
A. W. Grant,
A. W. Walliser,
Thornton Hall,
Officials of Express
Publishing Company.

Leroy G. Denman,
Attorney for Express
Publishing Company.

Frank G. Huntress, Jr.

Frank G. Ragsdale,
Henry B. Dielmann,
Negotiators designated by
San Antonio Newspaper Guild.

T. H. Burger,
Court Reporter.

---

118 MR. HUNTRESS: I will ask Mr. Hall to read my statement, on account of having a sore throat, if that is all right.

MR. DIELMANN: Yes, certainly.

MR. HALL: This is a statement by Mr. Huntress, (reading):

"Upon my return to my office on Monday, May 9, after a three weeks' absence from the state, I was shown the following communication from San Antonio Newspaper Guild, the receipt of which had previously on May 4 been acknowledged by my secretary:

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 871

San Antonio, Texas

May 3, 1938

Express Publishing Company
San Antonio, Texas.

Gentlemen:

The Guild, upon request of the San Antonio Express-Evening News Unit, desires to withdraw a paragraph of the Express-News Unit's statement read into the record at the last conference.

The paragraph withdrawn is Paragraph 20, reading as follows:

"Our loyalty to the company has been maintained in spite of stress recently placed upon it. We do not believe that the publisher is aware of, or would countenance such a state of affairs. We have been ridiculed and intimidated by responsible executives of the Express Publishing Company, and by other persons of influence, who, by their acts, have placed the company, we think in a position of having violated the National Labor Relations Act. We, however, have no desire to urge these violations unless driven to that end. As stated previously, our supreme desire is to maintain a cordial employer-employee relationship."

119

This paragraph is withdrawn for the reason that it has been erroneously construed by Company representatives as threatening Labor Board charges in the matters cited if a

contract was not negotiated. This certainly was not the intention of the Unit or the Guild.

Very truly yours,

The SAN ANTONIO NEWSPAPER GUILD

(Signed) FRANK G. RAGSDALE

President.

May 4, 1938.

San Antonio Newspaper Guild,

P. O. Box 871,

San Antonio, Texas.

Gentlemen:

Attention Mr. Frank G. Ragsdale

President

This acknowledges receipt of your letter of May 3rd requesting the withdrawal of a certain paragraph from the statement presented by San Antonio Express and Evening News Unit, San Antonio Chapter, American Newspaper Guild, at the last conference between the negotiators for the Guild and representatives of the Publisher.

Yours truly,

120 (Signed) THORNTON HALL

Thornton Hall/s

I have no objection to the Guild's withdrawing that paragraph of its statement if it so desires. However, I wish to state that I quite approve of the remarks regarding that

paragraph which my associates in these negotiations made in the meeting helding on April 21, last.

The Guild has seen fit to resubmit to us the same contract which it proposed at the outset of these negotiations, and which we rejected by a written statement that was read at the meeting of March 30, last. That statement fully set out our objections to that contract upon which was based our decision that it was unreasonable and unacceptable. However, it appears that the Guild is determined to attempt to put that contract over despite our objections.

To repeat, the terms and conditions of that proposed contract and the methods it outlines are directly contrary to the principles and practices which our newspapers have maintained and carried on for many years past. There is no reason why we should alter our policy and practice in this respect. It is our desire and intention to conduct the editorial departments of our two newspapers amicably and harmoniously, as they have been conducted in the past, and as they are being conducted now.

As we stated at the outset of these negotiations, every consideration has been, and will be, shown the Guild member employed by the editorial department, just as every consideration will be shown any and all other em-
121 ployees of that department who do not belong to the Guild. That is, there has been, and there will be, no discrimination shown as between Guild members and non-Guild members in the conduct of our two newspapers' news and editorial departments.

The Express and The Evening News employees always have been treated considerately and fairly as regards wages and working conditions. We believe that The Express was the first Texas newspaper to grant its editorial employees two weeks' vacation with full pay—this ar-

rangement dating back to 1902. Our company also has taken care of old employees who have been faithful to it for a number of years, so that they might continue to live securely. In every such case the monetary allowance made to the old employee was voluntarily granted and fixed by the Publisher.

We are always glad to meet with our employees, whether Guild members or not, for discussion of matters affecting their and the Company's welfare in any respect."

MR. DIELMANN: In connection with the same matter, Mr. Huntress, the Guild has addressed a letter to me, as chairman of this committee of negotiators, authorizing us to withdraw those same statements from the letter which we transmitted from the Guild at the last meeting. This just follows up the same matter, and I would like to ask that this be made a part of the record also. I will read it with your permission (reading):

122 San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box 113

San Antonio, Texas

May 14, 1938.

Hon. Henry B. Dielmann,

Chairman Committee of

Negotiators for the Express-

News Unit of the San Antonio

Newspaper Guild.

Sir:

At a meeting on April 21 of representatives of the Express Publishing Company and negotiators for the San Antonio Express and Evening News Unit of the San Antonio Newspaper Guild, the question arose regarding the striking of a paragraph alluding to certain facts from the formal statement of the Guild to the Express Publishing Company.

You are hereby authorized to strike from the statement the last paragraph on page four aand continuing onto page five.

You are further authorized to strike from the statement the last sentence of the fourth paragraph on page one of the statement.

SAN ANTONIO NEWSPAPER GUILD,

(Signed) CLIFF POTTER, Secretary.

Mr. DIELMANN: If that is satisfactory, we will consider those paragraphs stricken from the statement which we submitted to you.

MR. HUNTRESS: We have no objection to that letter appearing in the record.

123 MR. DIELMANN: May I ask this question at this time? Is the statement Mr. Hall just read on behalf of Mr. Huntress a reply to that communication which we presented at the last meeting?

MR. DENMAN: Yes, that was made in reply to your last statement.

MR. DIELMANN: In that statement, as I recall it, without going into details, the request was made that va-

rious items of the original contract proposed be discussed. As I understand the statement read by Mr. Hall on behalf of Mr. Huntress, Mr. Huntress takes the same position that the original contract is not acceptable. I think that is the sum and substance of it. In the last statement submitted by us on behalf of the Guild members we discuss the various objections made by you in your previous statement, which were discussed here, and attempt to discuss them from the Guild standpoint. Now, in view of the statement that has been read into the record, does that in effect mean that the last discussion by the Guild in its statement to the Publisher is practically rejected, together with the original contract as submitted?

MR. HUNTRESS: We have already very frankly stated in writing that the propcsed contract which was submitted at the first meeting that was held here was unacceptable and unreasonable, in other words, it was unreasonable and unacceptable.

MR. DIELMANN: Yes, and then the Guild has answered that by discussing the objections which you make to the original contract and has given arguments
124 why the objections are not well taken, and has given certain reasons why they think the contract should be discussed in its various provisions. Now, what I as a negotiator want to know now is what the status of those counter proposals, we might call them, on the part of the Guild members is at the present time. Are they rejected or is there a willingness on the part of the Publisher to discuss those counter proposals on behalf of the Guild members?

MR. DENMAN: There has never been a refusal to discuss. We have all been discussing. What do you mean by discuss? Whether the Publisher is willing to accept the contract? Because there has never been any refusal to discuss. Every time we come here you ask whether we are willing to discuss. I think we do discuss.. We discuss so much we interrupt each other.

MR. DIELMANN: Perhaps you did not understand my question. The original contract as proposed has been rejected as being unsatisfactory and unreasonable. The Guild comes back and discusses the various objections in this communication, inviting an open discussion on those disputed questions regarding the original contract. What I want to know is, the negotiators here either can or either cannot discuss the objections made by the Publisher and the reply made by the Guild, one or the other. In other words, are we at the end of what we can do? What is the next step for us as negotiators?

MR. DENMAN: You are free to discuss anything you wish, or say anything you want to say. Discussion means something said by somebody. Now, Mr. Huntress has said item by item what his objections were to the con-
125 tract, and anything you want to say I am sure Mr. Huntress will be glad to hear.

MR. HUNTRESS: You cannot reasonably expect us to continue this resultless discussion when you insist upon keeping that contract before us which has already been rejected as unreasonable and unacceptable. You have not given us anything to go by. All you say here is that you want us to discuss it. In other words, conversation based upon such an attitude can get us nowhere.

MR. DIELMANN: Well, all we can do is to take some proposal as the basis of discussion, even though it may on its face be unacceptable to you, yet it may be the basis of a discussion. In other words, you say here that a certain wage is an unreasonable wage and you do not accept that. Now, the only way we can find out what a reasonable wage is, according to your interpretation, is to discuss that wage or that particular classification. Now, I am merely inquiring as a negotiator whether we can do that, or is it your idea that we must submit to you an entirely new contract for your approval or disapproval.

MR. HUNTRESS: That is a matter entirely with the Guild. If you will look through the conversations that we have had so far you will find that you have at no time made it plain to us, other than submitting and resubmitting a proposed contract that we rejected.

MR. DIELMANN: Merely as a basis of discussion.

MR. HUNTRESS: I think we have made our objections to that contract very clear to you in writing.

126 MR. DIELMANN: Well, the Guild has answered your objections and there is, of course, a difference of opinion between the two of you. Our only purpose here is to see whether or not we can act as mediators between the Guild and you as the Publisher, in trying to arrive at what would be the basis of a fair contract to both. In other words, could we, as negotiators for the Guild members, arrange with you, or any representatives that you may choose, to sit around a table and take that contract which you have rejected and discuss it, and see if we can arrive at what ought to be eliminated and what might be acceptable, what rates might be considered reasonable by you.

MR. DENMAN: Mr. Dielmann, Mr. Huntress has met with you on three occasions, I believe it is, and sat around the table and has done that very thing. He has taken each paragraph of the contract and shown why he could not agree to it, and you have stated your arguments to try to convince, and they have failed to convince. If you have anything further to say, of course, you are free to say it.

MR. DIELMANN: Is it your position, then, Mr. Denman, that the only way we can continue to negotiate would be by an additional written communication?

MR. DENMAN: No, you can say orally anything you please, the meeting is open for that purpose. Go right ahead.

MR. HUNTRESS: As I see it, you have also persisted in ignoring and denying the fact that we have stated why your proposition was unreasonable and unacceptable.

MR. DIELMANN: I think that is a misapprehension on your part.

MR. HUNTRESS: Well, the record will show that.

127 MR. HARRIS: Mr. Denman has referred to the fact that we are stepping on each other's toes conversationally, and I am going to plead guilty to my share of that. Haven't you gentlemen just withdrawn your request for a detailed discussion of the contract which has been rejected? You state in your letter of May 14th, "You are further authorized to strike from the statement the last sentence of the fourth paragraph on page one of the statement." Now, the sentence in question is a request that the Publisher go over the contract proposed item by item.

MR. DENMAN: No, as I understand, the part withdrawn is the part intimating that it was a violation of the Wagner Act.

MR. HARRIS: Then it is the last clause of the sentence and not the entire sentence.

MR. DIELMANN: I am satisfied that is correct.

MR. HARRIS: I do not want to split hairs, but I was confused by that statement.

MR. DIELMANN: Of course, if the whole sentence were withdrawn that would not leave anything else to negotiate about, it would be just the question of the contract having been rejected and that would be the end of it.

MR. DENMAN: In an effort to give full consideration to the proposed contract, the Express Publishing Company has stated item by item what its objections to the

contract are, and has stated fully those objections in writing, and I do not believe you can say there has been no discussion. All we can do is reiterate here what has been said in writing. If you can think of anything more you want to say or any additional argument
128 you want to make, that is what the meeting is for.

MR. RAGSDALE: Mr. Denman, there is a great deal to be said. I want to try to again make it clear that our efforts, and my personal efforts, are utterly sincere in this. I have never tried to put anybody on the spot. There has been a lot of accusation that we have been trying to back somebody into an admission. Personally I have been trying to find out where we stand. Now, the original objections that were filed by Mr. Huntress in many cases were based on a misapprehension and a misunderstanding of what the intention is. It may be obscurely worded, as to what the Guild's intention is in that original contract. And to my mind, the only way we can meet and see just what we think about it, what we think it means and what the Express Publishing Company thinks it means, is to sit down and go over it. And if we have written something there that is obscure, if it means something we did not intend it to mean, the only thing we can do is to get together and write it correctly. The Guild, in this last meeting we had in Mr. Huntress' absence, specifically stated that it wanted it understood that the contract proposed was a basis for negotiations, that we had no idea that we were going to get the wages set out there, although we thought that those wages were right, but conditions were not right to get them. There were other things there that we said, for instance the Guild Shop. The Guild said it would be willing possibly to waive that, and that it would not be discussed any further at the present time. All we want to do is to find out what you people think about what we have proposed and to iron out any misunderstandings about what we
129 mean about those things. That is my idea of negotiations.

MR. HUNTRESS: Then is it your understanding that the contract you submitted was not fair and proper on your part?

MR. RAGSDALE: No, sir. We believe that is a fair and proper contract.

MR. HUNTRESS: We stated to you in our different discussions here that it was unreasonable and unacceptable to us, and we have given the reasons fully why it was not, but you still insist upon that contract.

MR. RAGSDALE: We are not insisting upon that contract, we are insisting upon ironing out that contract and getting as close to it as we can get and as you are willing to give. We still insist that it is a fair contract, but that we do not expect at this time to get that contract.

MR. HUNTRESS: Don't you know that the contract submitted by you is not being taken and adopted at this time by any newspaper?

MR. RAGSDALE: Practically that contract has been signed by newspapers—

MR. HUNTRESS: Wait a minute, I said at the present time, and for the last few months.

MR. RAGSDALE: Yes, there have been contracts in the past few months that have been signed that are practically the same contract.

MR. DIELMANN: I believe the members of the Guild realize that even though they consider the contract submitted is a fair contract, Mr. Huntress, that it probably would not be justified under present conditions
130 obtaining in San Antonio. Isn't that about right? In other words, it is a fair contract for a basis of

discussion. It may not be warranted in all of its provisions at the present time.

MR. HARRIS: Is there any difference in conditions now from what they were when the contract was submitted?

MR. DIELMANN: That is something I could not tell, because I am not familiar with any change in the publishing business.

MR. RAGSDALE: I cannot see how that would change it.

MR. HARRIS: Two meetings ago I asked that specific question of Mr. Berkowitz, I believe it was, as to whether there was any serious belief on the part of the Guild that that contract would be acceptable at the time it was submitted, and the answer was in the negative. Now, there may be some misunderstanding on the part of one side or the other to this discussion, but as far as I am concerned, let me ask you this: Don't you consider that that contract speaks for itself in its own terms?

MR. DIELMANN: I believe I understand what you have in mind, and it was mentioned once or twice before. The position of the Guild is that the wage scales, for instance, in the original contract as submitted, are not unreasonable, considering the type of work that is done and what is demanded of the men doing that type of work. Whether or not at this particular time the Publisher could be expected to pay the exact amounts given in that contract is a debatable question and, of course, would have to be decided by negotiations, until a figure would be arrived at which would under present circumstances be
131 agreeable to both sides, and fair and equitable.
Do you have the original contract which we submitted, Mr. Hall?

MR. HALL: This is it (passing paper to Mr. Dielmann).

MR. DIELMANN: Mr. Harris, you asked the question if we thought the provisions of the original contract submitted were fair. Did you have particular reference to the salaries provided in the contract?

MR. HARRIS: You will not find any such question in the record coming from me. I did not even use that word. My question was if you all had any serious expectations that the contract as submitted would be accepted as a basis of negotiations. I did not say anything about the fairness or unfairness of it.

MR. DIELMANN: Did you ask whether it would be considered by us as the basis of negotiations, accepted as a basis of negotiation?

MR. DENMAN: Don't you think you had better let the record speak for itself on that? We are just giving Mr. Burger a lot of words here that cost money.

MR. HARRIS: My question was whether the Guild and its negotiators had any serious expectation that the original contract as submitted would be acceptable and taken as a basis of negotiations. Now, that is in the record. I forget just the exact terms of the negotiator's reply. I believe it was Mr. Berkowitz who made the reply, but it was to the effect that it was in the negative. If you want to look back at the transcript you will find the question and the answer there.

MR. DIELMANN: I believe I am justified in
132 saying that they certainly did expect it to be accepted as a basis for negotiations, and that is still our position today as negotiators for the Guild. For instance, this one question with reference to article six relating to hours, in which the provision of the contract calls for a five day week, a five day forty hour week. On that question, for instance, the Guild does not think that that is unacceptable, but rather expects that that would be the basis of negotiations.

MR. HARRIS: I believe that is one of the specifications in the Publisher's answer, isn't it, Mr. Denman?

MR. DENMAN: He referred to that in his answer.

MR. DIELMANN: I am informed that this provision of a five day forty hour week is a provision in every contract that the Guild has signed, it is a standard provision that is embodied in every contract. I do not recall any reference in Mr. Huntress' objections to that article.

MR. DENMAN: He made an objection to the general provision. There are several articles tied together. That is the trouble of reading it sentence by sentence. It provides there is to be so much work done within a certain number of days, with three or four interlocking provisions there. There is a lot more in it than what you read.

MR. DIELMANN: It is a simple provision, I don't think it is very complicated.

MR. DENMAN: It is simple, but Mr. Huntress stated it was unacceptable.

MR. DIELMANN: Do I understand, then, Mr. Denman, that what you mean is that so far as the
133 five day forty hour week is concerned, it is unacceptable?

MR. HUNTRESS: We made the statement clearly that the whole contract was unacceptable, unreasonable and unacceptable. Isn't it true that the whole structure of the friendly relations with our employees may be endangered by the attitude that you have taken here? Because you are getting nowhere with the arguments that are being made.

MR. DIELMANN: Well, I will be very frank, Mr. Huntress. I had hoped I could be of some assistance in trying to arrive at some basis of negotiation which could be

carried on in a very friendly spirit and in a profitable way for both sides, but I am almost convinced now that my usefulness is at an end.

MR. HUNTRESS: We have tried to do this since the beginning of these discussions. I will say here again that we intend to run the editorial department as it is run today, and every consideration will be accorded to Guild members as are accorded other employees in that department. We believe that our employees on the Express and Evening News know our problems.

MR. DIELMANN: Well, gentlemen, I hope that is not due to my inability to be a more successful negotiator, but frankly I believe that I am not justified in continuing any further on these discussions. I do not think we are getting anywhere, but perhaps somebody else can be of more assistance than I have been, and I shall be glad to have them take my place. I personally feel like I ought to tell the Guild that I do not seem to be able to get anywhere. I am saying that in all fairness and all frankness, without
134 changing my attitude, which has been that of trying to be a fair and impartial negotiator. I am sorry that I have not been able to be of any assistance to both sides, and frankly; so far as I am concerned, I am not going to take up any more of your time.

MR. HUNTRESS: I would like to ask Messrs. Denman, Harris, Grant, Walliser and Hall if they desire to make any further statement in this matter?

MR. DENMAN: I see nothing further, except that in case at any time you have anything to say we will always be glad to hear it. I am sure there has been no personality involved, merely a difference of opinion.

MR. HARRIS: I would like to call your attention to one thing which I think has a certain relative importance. If Mr. Dielmann intends to withdraw his successor will not

have been present at the meetings that have gone before. There is a rather serious omission in the minutes of the meeting of March 30th, at which meeting Mr. Dielmann, Mr. Ragsdale and Mr. Berkowitz were present. It was in reply to a statement made by Mr. Berkowitz, and I think the minutes ought to be corrected.

MR. DENMAN: On the copy I had of these minutes I penciled some corrections that I intended to submit to Mr. Dielmann. There were quite a number of typographical errors in everyone's statement. I will send it over and let Mr. Dielmann see it, to see if it meets Mr. Dielmann's approval.

MR. HARRIS: You remember Mr. Berkowitz rather implied an unwillingness on the part of the Publisher to negotiate, and he was asked to correct that statement.

MR. DENMAN: He did correct that.

135 MR. HARRIS: But that does not appear in the transcript.

The meeting thereupon adjourned sine die.

136 I, T. H. Burger, court reporter, hereby certify that I was employed to, and did, take down in shorthand the proceedings had at the meeting between officials of the Express Publishing Company and the negotiators for the San Antonio Newspaper Guild, held in the Express Publishing Company Building, beginning at 4:30 o'clock p. m. on the 23rd day of May, 1938; and I further certify that the foregoing 19 pages contain a full, true and correct transcript of all proceedings had at said meeting.

Witness my hand this 30th day of May, A. D., 1938.

T. H. Burger,
Court Reporter.

137 EXHIBIT V

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box No. 871

San Antonio, Texas

July 20, 1938

Mr. Leroy G. Denman,
215 West Commerce Street,
San Antonio, Texas.

Dear Mr. Denman:

It has been brought to the attention of the San Antonio Newspaper Guild by Mr. H. F. LeBaron, representative of the National Labor Relations Board, that Mr. Frank G. Huntress desires to defer the conference with Mr. LeBaron and the representatives of the Guild until August 4, due to the fact Mr. Thornton Hall is out of the city.

Inasmuch as the efforts of the Guild to reach an amicable agreement with Mr. Huntress have already consumed many months, we are most anxious to not delay the meeting any longer than necessary. We should like to hold the meeting as soon as possible, and not delay until August 4, or some future date.

The Guild also desires to say that it no longer desires to pay for shorthand reports of conferences. The Guild has paid a considerable sum to court reporters already, and feels that further expense for transcripts is unnecessary.

We should greatly appreciate your advising us as soon as possible whether it will be possible for the representatives of the Guild to meet with Mr. Huntress and Mr. LeBaron sooner than August 4.

Very truly yours,

San Antonio Newspaper Guild, by

Cliff Potter, Sec.

138 EXHIBIT W

July 22, 1938

Mr. Cliff Potter, Secretary
San Antonio Newspaper Guild
San Antonio

Dear Mr. Potter:

Your letter of July 20 to Mr. Leroy G. Denman has been handed to the writer.

Mr. LeBaron requested a conference, through Mr. Denman, and August 4 was fixed as the earliest available date. The conference will be held on that date at 2:30 o'clock in the afternoon at the usual meeting-place in the Express Publishing Company Building.

Very truly yours,

Frank G. Huntress

President

FGH-h

139 EXHIBIT X

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box No. 871

San Antonio, Texas

August 1, 1938

Mr. Frank G. Huntress, President
The Express Publishing Company,
San Antonio, Texas.

Dear Mr. Huntress:

We have your letter of July 22, setting August 4 as the date for a conference between the Express Publishing Company and the negotiators for the Guild. According to our understarding, this conference was requested by Mr. Howard LeBaron, examiner for the National Labor Relations Board.

However, in telephone conversation with Mr. Denman we have been informed that you consider the conference on August 4 to have been cancelled By Mr. LeBaron.

The Guild still would be glad to attend a conference on this or any other early date to discuss either our proposed contract or the Express Publishing Company's counter proposal.

We feel that the Guild has been more than reasonable in its efforts to reach an agreement with the Publisher in these negotiations. There has, however, been an evident misunderstanding of the Guild's purposes and intentions. It is possible this misunderstanding may be through some error on the part of the Guild.

We are informed that one set of copies of the proposed contract contains the clause:

"There shall be no discharges".

If this clause is in the copy submitted to the Publisher, it is in error. There certainly is no intention on the part of the Guild to limit legitimate and reasonable discharges.

In this respect, all we seek is that there be a written contract giving formal standing to the Guild if it should be necessary to challenge a dismissal which it might consider to be an injustice. This statement is not a presumption that the injustice would be a deliberate act of the Publisher. We have no doubt that if such a case should arise, it would be either the result of a misunderstanding of facts or the act of a subordinate. In either case we have no doubt the Publisher would welcome having such injustices brought to his attention.

Guild contracts and agreements have been in effect for several years and on many papers. Many of them
140 are more restrictive with regard to employment and discharge than the contract we have proposed. Yet we challenge the Publisher to cite a single instance where the American Newspaper Guild or any local has seriously pressed the questioning of any legitimate discharge for cause.

With regard to employment rights, the Guild has indicated that, other provisions of the contract being satisfactory, it would be willing to request the International to waive the Guild Shop clause at this time.

There remains, then, merely the reaching of an agreement on wages, hours and working conditions. On these, we repeat, the Guild will be glad to consider the proposal of the Publisher.

Very truly yours,

San Antonio Newspaper Guild

Frank G. Ragsdale

President.

141 EXHIBIT Y

August 2, 1938

Mr. Frank G. Ragsdale, President
San Antonio Newspaper Guild
San Antonio, Texas

Dear Mr. Ragsdale:

Replying to your letter of August 1.

If the negotiators for the Guild desire another meeting with us, to resume the discussions which they broke off after our meeting of May 23rd, last, we will meet with them on the date already suggested, Thursday, August 4, at 2:30 p. m. at the usual place.

This was the arrangement proposed for the meeting, until it was cancelled by Mr. Howard LeBaron of the National Labor Relations Board office in conversation with our attorney, Mr. Leroy G. Denman.

If the date of August 4 is not convenient for the Guild's negotiators, then we suggest Monday, August 8, at the same hour and place.

Very truly yours,

President

FGH-h

142 EXHIBIT Z

San Antonio Newspaper Guild

A Local of the American Newspaper Guild

Post Office Box No. 871

San Antonio, Texas

August 4, 1938

Mr. Frank G. Huntress, President
The Express Publishing Company
San Antonio, Texas.

Dear Mr. Huntress:

This acknowledges your letter of August 2nd, setting a conference between the Express Publishing Company and the negotiators for the Guild for this date.

The Guild regrets that this conference was not held and, at the request of Mr. Hall, here states its understanding of the reasons for the failure to meet.

In view of the statement of Mr. Denman that the conference originally called for this date at the request of Mr. LeBaron had been cancelled at Mr. LeBaron's suggestion, and further in view of our letter of August 1st in which we stated that the Guild would be glad to attend a conference to discuss any counter-proposal by the Company or the Guild's original proposal, we assumed today's conference was called by the Company for that purpose and our negotiators were prepared to attend.

However, during the morning Mr. Denman telephoned from Kingsville to inquire about the status of the conference. During the conversation it developed that we were

under a misconception. He gave us to understand that the Company considered that the Guild had requested the conference. We had not done so and it seemed to be agreed that the meeting would be futile and he said he would not return to the city.

This information was conveyed to Mr. Hall by telephone and he concurred that no conference would be held today.

The Guild wishes it clearly understood that it sincerely desires to come to an agreement with the Company fairly and amicably, with equal justice to both employer and employes. Whenever the Company desires to meet with us for this purpose we will be more than glad to have our negotiators present.

Very truly yours,

San Antonio Newspaper Guild

Frank G. Ragsdale

President

San Antonio Newspaper Guild
Post Office Box 871
San Antonio, Texas

San Antonio, Texas
Aug 5
7 AM
1938

MR. FRANK G. HUNTRESS
Express Publishing Company
San Antonio, Texas.

143 EXHIBIT AA

Denman, Franklin & Denman
Lawyers

Offices in San Antonio Loan and Trust Building

San Antonio, Texas

August 5, 1938.

Mr. Frank G. Huntress,
Express Publishing Co.
San Antonio, Texas.

Dear Mr. Huntress:

Yesterday morning on August 4th I was at Kingsville and telephoned Mr. Hall to inquire whether the Express had received any answer to your letter of August 2nd in which you informed the Guild that if it desired a meeting it would be satisfactory to have it on August 4th at 2:30 P. M., the date originally suggested, or if that date was not satisfactory to the Guild Negotiators then on Monday, August 8th. Mr. Hall informed me that no answer had been reeeived from the Guild. In order to know whether it would be necessary for me to return to the City by 2:30 P. M. I called Mr. Ragsdale and asked him whether the Guild expected to attend the meeting. He stated that it was his understanding that you had asked for the meeting. I told him that was not my understanding of the letter; that the meeting had originally been asked for by Mr. LeBaron and had subsequently been cancelled by him; that at a later date on August first Mr. Ragsdale had written to you that the Guild would be glad to attend a conference. That in your letter of August 2nd you in compliance with that request had consented to a conference for August 4th if convenient and if not suggested the following Monday, so that you were merely acceding to the Guild's request for a con-

ference. Mr. Ragsdale said "Well, we have nothing more to submit". I said you mean there will be no conference, and he said, that is correct.

I think there has been a misconception in that we construed the Guild's letter of August first as asking for a conference although Mr. Ragsdale does not so construe it. He construed your letter of August 2nd as requesting a conference while we construed it as merely consenting to one if the Guild wanted it.

Yours truly,

Leroy G. Denman

LGD-k.

144 August 5, 1938

Mr. Frank G. Ragsdale, President
San Antonio Newspaper Guild
San Antonio, Texas

Dear Mr. Ragsdale:

Your letter in regard to our communication of August 2, in which we expressed willingness to meet with the Guild's negotiators on either August 4 or August 8, is postmarked by the San Antonio postoffice August 5, 7 AM., although the letter itself is dated August 4.

Although our discussions with you and your co-negotiators were broken off by our negotiators on May 23, last, we acceded to a request by Mr. Howard LeBaron of the National Labor Relations Board regional office for a further meeting with the Guild's spokesmen. When Mr. LeBaron's request was conveyed to me by our Attorney, Mr. Denman, I fixed the date for that meeting as August 4. In a letter to Mr. Denman, dated July 20, the Guild's secretary, Mr. Cliff Potter, requested that the meeting be

held earlier than August 4. My reply to Mr. Potter's letter on July 22, fixed August 4 as the earliest available date.

In your letter of August 1, addressed to me, you stated that "The Guild still would be glad to attend a conference on this (August 4) or any other early date. . ." My letter of August 2, in reply to that communication from you, stated that "if the date of August 4 is not convenient for the Guild's negotiators, then we suggest Monday, August 8."

Herewith copy of a letter from our Attorney, Mr. Leroy G. Denman, bearing upon his telephone conversation with you on August 4.

Very truly yours,

President

FGH-h
enc.

145 EXHIBIT CC

National Labor Relations Board

Sixteenth Region

405 Federal Court Building

Fort Worth, Texas

September 22, 1938

Mr. Leroy G. Denman
Attorney at Law
San Antonio Loan & Trust Building
San Antonio, Texas

Re: Express Publishing Company

Case No. XVI-C-293

My dear Mr. Denman:

Enclosed is copy of complaint and notice of hearing in the matter of the above numbered case.

Our object is always to avoid the expensive procedure of hearings where possible. Should you be disposed to contact us prior to the date of the hearing for the purpose of adjusting the matters made the subject of the enclosed instrument in compliance with the National Labor Relations Act, we should be happy to have you call upon us.

Sincerely

Edwin A. Elliott

Regional Director

EAE mc
Enclosure

146 EXHIBIT DD

September 30, 1938

In re Express Publishing Company case No. XVI-C-293

National Labor Relations Board
Sixteenth Region
405 Federal Court Building
Fort Worth, Texas

Attention Dr. Edwin A. Elliott:

Dear Doctor Elliott:

Receipt is acknowledged of your letter of September 22 sending me copy of complaint and notice of hearing in this

case. Enclosed I am filing the original and three copies of the answer of the Express Publishing Company.

I note your remarks in reference to adjustment of the subject of the complaint. As is shown by the stenographic report of the negotiations carried on, the difficulty was not failure to negotiate, but inability to agree, and the negotiations were terminated by the Guild and not by the Express, the Express having always been willing to have any further meetings at any reasonable time if the Guild thought it would be of any benefit.

Yours truly,

(Signed) Leroy G. Denman

lgd-hs
enc

147 EXHIBIT EE

An agreement made this 28th day of Feb., 1938, between the Light Publishing Company, hereinafter known as the Publisher, and the San Antonio Newspaper Guild, a local chartered by the American Newspaper Guild, hereinafter known as the Guild, for itself and on behalf of all full time employees in the editorial department of the Publisher, except as hereinafter provided, covering conditions of employment in the editorial department of the Publisher.

WITNESSETH: In consideration of the covenants mutually hereinafter agreed to, it is agreed between the Publisher and the Guild as follows:

SECTION 1. All of the conditions and benefits contained in this contract shall apply to all full time employees who are now, or hereafter, during the life of this contract may be, employed in the editorial department of the Publisher, except such employees as are otherwise specifically provided for in this contract.

SECTION 2. The editor, managing editor, Sunday editor, city editor, assistant managing editor, sports editor, and private secretaries shall be excluded from the provisions of this contract.

SECTION 3. For the purpose of this agreement, "experience" shall be defined as follows: Employees shall possess the indicated years of experience within the classifications shown either on the San Antonio Light or upon the staffs of daily newspapers of not less than 10,000 bona fide circulation, said circulation to be determined by a recognized circulation audit report, or bureaus of recognized established national or local news or photo services, in the same line of employment for which said employee is hired by the Publisher. The Publisher shall be the sole judge of competency under this definition.

SECTION 4. The five day 40 hour work week shall obtain for all editorial department employees, except those excluded from the terms of this agreement. The working day shall consist of eight hours, falling within nine consecutive hours.

Accumulated overtime shall be liquidated within 60 days, in amounts of not less than eight consecutive hours off, if accrued.

If an employee has not taken his accumulated overtime at the termination of his employment, he shall be compensated in cash for such overtime.

Overtime shall be compensated at the rate of equivalent time off or pro rata pay at the option of the Publisher.

Overtime claims must be made as provided by office rules posted on the bulletin board.

SECTION 5. When an employee who has been employed less than three months is discharged, he is not en-

titled to notice or dismissal pay; when employed more than three months and less than six months, he shall receive two weeks dismissal notice or one week's dismissal indemnity at the option of the Publisher. When an employee is discharged after six months' continuous service, he shall receive a cash severance payment in accordance with the following schedule:

148 When employed more than six months and less than one year, one week's pay;

When employed more than one year and less than two years, two weeks' pay;

When employed more than two years and less than three years, three weeks' pay;

When employed more than three years and less than four years, four weeks' pay;

When employed more than four years and less than five years, five weeks' pay;

When employed more than five years and less than six years, six weeks' pay;

When employed more than six years and less than seven years, eight weeks' pay;

When employed more than seven years and less than eight years; ten weeks' pay;

When employed more than eight years and less than nine years, twelve weeks' pay;

When employed more than nine years, fourteen weeks' pay;

Severance pay shall be computed at the highest rate of pay received during the six months prior to discharge. The years of service provided for herein shall mean the total continuous service with the Publisher. From such severance pay shall be deducted old age benefit tax paid to the Social Security Board.

Where the discharge of an editorial employee is due to wilful breach or gross misconduct, the amount of dismissal indemnity to be paid, if any, shall be determined by mutual agreement of the Publisher and a conference committee.

SECTION 6. Two weeks vacation with pay shall be granted all editorial department workers who have worked for the Publisher one year or more. One week vacation with pay shall be granted all editorial department workers who have worked for the Publisher for more than six months and less than one year.

Employees will be permitted to file, in writing, their vacation time preferences, and a schedule shall be prepared in conformity with such requests, provided the Publisher shall reserve the right to change such schedule by giving one week notice thereof, in the event of any work emergency. No editorial department employees shall take vacation after September 15 except by mutual agreement between the Publisher and the employee.

SECTION 7. The Publisher shall pay all legitimate expenses incurred by the employees in the service of the Publisher, and necessary working equipment shall be provided by the Publisher. Employees using their own automobiles in the service of the Publisher shall be compensated weekly at the sum to be mutually agreed upon by the Publisher and the employee.

SECTION 8. No employee shall be transferred by the Publisher to any other Hearst enterprise without the employee's consent, and in the event such other enterprise is

in another city, without payment of the employees traveling expense and transportation.

SECTION 9. Employees of the Publisher shall be free to engage in activities on their own time which do not consist of services performed for publications in direct competition with the Publisher; provided that, without permission no employee shall exploit his connection with the publisher in the course of such activity.

149 SECTION 10. The provisions of this contract shall not apply to temporary employees, such as election return workers, contest judges, etc., nor to employees who average less than 20 hours of work per week for the Publisher.

SECTION 11. The Publisher may prescribe rules, not in conflict with this agreement, such as are deemed necessary in the operation of the business, such rules to be posted on the bulletin board in the editorial department.

SECTION 12. Without permission in writing from the Publisher, no employee shall use the name of the Publisher or any featured title or other material of the Publisher to exploit his outside endeavors.

SECTION 13. No employee shall be required to have published under his name any material containing an expression of opinion not in conformity with his opinion.

SECTION 14. Sick leave is granted with full pay, the duration of such benefits to be decided by the management upon the merits of individual cases. No deductions shall be made for sick leave from overtime credited to the employees.

SECTION 15. Wages and salaries and classification of employees:

	3 Years	1 Year	Under 1 Year
Copy Desk, Rewrite	$40.00		

Editorial Workers, Reporters, Artists Retouchers, and Camera Men

$37.50 25.00 16.00

Society, Clubs, Home Economics and Librarians

Experience up to three years....$20.00
And more than three years.....$25.00

Filing Clerks, Copy & Office Clerks, Office Boys and Messengers

$15.00 minimum

This agreement shall be in full force and effect from the 7th day of March, 1938, and shall expire on the 7th day of March, 1939. Within 60 days of the expiration date herein the Publisher and the Guild may initiate negotiations for a new agreement, to become effective at the expiration of this agreement.

W. McIntosh, Pres.
Light Publishing Company

Joseph E. Dynan, President
San Antonio Newspaper Guild

Cliff Potter, Secretary

EXPRESS-NEWS CONTRACT

An agreement made this——day of———, 1938, between the Express Publishing Company, hereinafter known as the Publisher, and the San Antonio Newspaper Guild, a local chartered by the American Newspaper Guild, hereinafter known as the Guild, for itself and on behalf of all the employees in the editorial department, both Express and Evening News, of the Publisher.

WITNESSETH: In consideration of the covenants mutually hereinafter agreed to, it is agreed between the Publisher and the Guild as follows:

ARTICLE I—Guild Shop.

1. The Publisher shall require as a condition of employment of any employee that he be and remain a member of the Guild in good standing during the term of his employment. If any employee be not a member of the Guild at the time of signing of this agreement or at the time of his acceptance of employment, he shall become a member of the Guild within thirty days of the date of signature of this agreement or within thirty days of his becoming an employee of the Publisher.

2. The Guild agrees that it will admit to membership and retain in membership any employee, subject to the Constitution of the American Newspaper Guild and by-laws of the Guild.

ARTICLE II—Preferential Hiring.

1. In the event that the Publisher finds it necessary to fill vacancies in the aforesaid department or requires additional employees in said department, he shall apply to the Guild to supply a candidate or candidates for said positions. In the event that the Guild is unable to supply candidates for said positions satisfactory to the Publisher within five days after notice by the Publisher to the Guild of his requirements, the Publisher may select any persons he desires for such positions, provided they are eligible for Guild membership.

ARTICLE III—Classifications.

In application of this agreement, all employees shall be divided into the following classifications:

A. City editors, telegraph editors, heads of copydesks.

B. Assistant city editors, assistant heads of copydesks, copyreaders, rewrite men.

C. Sports editors.

D. Society editors.

E. Sports and Society reporters, helpers.

F. Reporters.

G. Morgue, Library workers.

H. Artists.

I. Photographers.

J. Copyboys, office boys.

K. Editorial writers.

151 ARTICLE IV—Minimum Salaries.

E. No employee within classification A as set forth in the foregoing article shall receive a weekly rate of pay less than $65.

2. No employee within classification B as set forth in the foregoing article shall receive a weekly rate of pay less than $60.

3. No employee within classification C as set forth in the foregoing article shall receive a weekly rate of pay less than $60.

4. No employee within classification D as set forth in the foregoing article shall receive a weekly rate of pay less than $50.

5. No employee within classification E as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

After three years' daily newspaper or news service experience, or assistant editors, regardless of experience ..... $45.
After two years' experience ..... $35.
After one year's experience ..... $30.
Less than one year's experience ..... $25.

6. No employee within classification F as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

After five years' experience ..... $55.
After four years' experience ..... $50.
After three years' experience ..... $45.
After two years' experience ..... $40.
After one year's experience ..... $30.
Less than one year's experience ..... $25.

7. No employee within classification G as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

Head librarian ..... $40.
Helpers:
After three years' experience ..... $35.
After one year's experience ..... $30.
Less than one year's experience ..... $25.

8. No employee within classification H as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

Chief artists, head of department ..... $60.
Helpers:
After five years' experience ..... $40.
After four years' experience ..... $35.
After three years' experience ..... $30.
After two years' experience ..... $25.
After one year's experience $22.50
Less than one year's experience ..... $18.

9. No employee within classification I as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

After five years' experience	$55.
After Four years' experience	$50.
152 After three years' experience	$45.
After two years' experience	$40.
After one year's experience	$30.
Less than one year's experience	$25.

10. No employee within classification J as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

After one year's experience	$22.50
Less than one year's experience	$17.50

11. No employee within classification K as set forth in the foregoing article shall receive a weekly rate of pay less than that set out in the following schedule:

After three years' experience	$65.
After one year's experience	$50.
Less than one year's experience	$40.

12. The minimum set forth in the foregoing sections of this article shall be increased ten per cent for any employee whose normal working schedule requires him to be on duty at any time between the hours of 7 p. m. and 6 a. m.

13. There shall be no reduction in salaries.

14. The rate of pay of any employee in excess of minimum rates set forth in this article shall be established by individual negotiation between said employee and the Publisher.

15. Payment of wages shall be made weekly.

16. In this article the term "experience" shall be construed to mean experience on any daily newspaper or news service, i. e., employment with any daily paper or news service. The term "editor" or "department head" shall mean one in charge of the department, one with whom responsibility lies.

ARTICLE V—Level Increase in Pay.

As of the effective date of this contract the salary of any employee which is not increased by ten per cent through the application of the minimum salary provisions, shall be so increased.

ARTICLE VI—Hours.

1. The five-day, 40-hour week shall obtain.

2. The working day shall consist of eight hours falling within nine consecutive hours.

3. The Publisher shall compensate for overtime at the rate of time and one-half in either time off or cash. If compensation is in time off, it shall be given in periods of not less than eight hours, and within six weeks of its accrual at the mutual convenience of the management and the employee. Overtime accumulated during the six weeks preceding an employee's vacation may be added to his vacation.

4. The Publisher shall cause a record of all overtime to be kept.

5. If an employee has not taken his accumulated overtime at the termination of his employment with the Publisher, he shall be compensated in cash in a lump sum.

153 ARTICLE VII—Severance.

1. Upon dismissal, an employee shall receive a written notice from the Publisher or his agents stating the cause for his dismissal.

2. Upon dismissal or resignation, an employee shall receive a cash severance pay in a lump sum, equal to four weeks' pay for every year of service or fraction thereof, such pay to be computed at the highest weekly rate of pay received by the employee during his service with the Publisher.

3. By arrangement with the Publisher, employees may be granted leaves of abasence without prejudice to continuing service in the determination of severance pay.

ARTICLE VIII—Vacations.

1. Employees shall be entitled to an annual vacation with full pay at the rate of one week after six months' service, two weeks after one year's service, three weeks after five years' service.

ARTICLE IX—Illness.

1. In the event of illness resulting from the performance of his duties, an employee shall receive sick leave with full pay for the entire duration of such illness.

2. In the event of illness from any other cause, an employee shall receive sick leave with full pay, the minimum duration of such sick leave within any one calendar year to vary according to the length of service of the employee with the Publisher at the time of becoming ill, at the rate of four weeks for every year of service or fraction thereof.

3. No deductions shall be made for sick leave from overtime credited or to be credited to the employee.

ARTICLE X—Limitation of Apprentices.

Of the employees within classifications A, B, C, D, E, F, G, H, and I, not more than ten per cent shall be employees with less than three years' experience and within that ten per cent not more than one-half shall have less than one year's experience. This shall not apply to employees in the service of the Publisher when negotiations on this contract are opened.

ARTICLE XI—Miscellaneous.

1. The Publisher shall pay all legitimate expenses incurred by an employee in the service of the Publisher and shall compensate for the use of an automobile in the service of the Publisher at the rate of ten cents a mile.

2. The employees of the Publisher shall be free to engage in any activities outside of working hours provided such activities do not consist of services performed for publications in direct competition with the Publisher and provided further that without permission no employee shall exploit his connection with the Publisher in the course of such activities.

3. The Publisher agrees not to have or enter into any agreement with any other Publisher binding other publisher not to offer to give employment to employees of the Publisher.

4. There shall be no dismissals in any department because of the expense of putting this agreement into effect.

154 5. Reporters shall not be required to act as photographers and photographers shall not be required to act as reporters.

6. The Guild shall be allowed to place a bulletin board in each editorial office for the purpose of posting notices and communications.

7. The Publisher agrees not to hire any employee on a part-time basis, i. e., for periods less than the 40-hour week, and agrees not to allow anyone to work on the staff without compensation from the Publisher.

8. Copyboys or office boys who have served five years in that capacity with the Publisher, and who are 21 years old or over, shall be given the first opportunity of filling vacancies in the editorial department.

9. The Publisher shall not enter into any contract for the preparation of news, editorial or feature material, or any matter represented as such in the columns of the Publisher at wage rates or under working conditions less acceptable than those specified in this agreement, provided that this shall not be interpreted to bar contracts with nationally recognized wire services, feature services or photo syndicates.

10. No employee shall be required to have published under his name any material containing an expression of opinion not in conformity with his opinion.

11. The article in this agreement respecting wages, severance, vacations, and illness, i. e., articles IV, VII, VIII, and IX, shall be retroactive to the date negotiations on this agreement were opened between the Guild and the Publisher.

12. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the Publisher.

13. This agreement shall commence on the ——— day of ———, 1938, and expire on the ——— day

of ————, 1939; within a sixty-day period immediately prior to the termination of this agreement, the Publisher and the Guild shall initiate negotiations for a new agreement to take effect at the expiration of this agreement. If such new agreement is not completed at the end of that sixty-day period or on the expiration date heretofore given, then this agreement shall continue in effect until such new agreement is completed.

THE EXPRESS PUBLISHING COMPANY

By————————————, President.

————————————

————————————

THE SAN ANTONIO NEWSPAPER GUILD

By————————————, President.

————————————

————————————

WITNESSED BY:

————————————

————————————

BLANK PAGE

BLANK PAGE

CLERK'S COPY

VOLUME IV

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

BLANK PAGE

San Antonio, Texas
November 22nd, 1928.

San Antonio Typographical Union No. 172,
Light Publishing Company,
Express Publi[illegible]ng Company.

We, the und[illegible]ned members of the arbitration board have reached a decision that the following contract shall be effective as between the San Antonio Typographical Union No. 172 and the Express Publishing Company and the Light Publishing Company effective from the date provided in said contract to and including the expiration therein set forth.

For the Publishers (Wm. McIntosh
(
(Frank G. Huntress

For the Union (Geo. V. Schmitz
(
(O. W. Atterbury
Arbitration Board.

CONTRACT OF WAGES, HOURS, AND WORKING CONDITIONS Between Express Publishing Company, publishers of the San Antonio Express and San Antonio Evening News, and the Light Publishing Company, publishers of the San Antonio Light; and the San Antonio Typographical Union No. 172, a subordinate of the International Typographical Union of North America.

Section 1. This contract, made and entered into this 22nd day of November, 1928, by and between the Express Publishing Company, publishers of the San Antonio Express and the San Antonio Evening News, and the Light Publishing Company, publishers of the San Antonio Light, party of the first part, and the San Antonio Typographical

Union No. 172, a subordinate of the International Typographical Union of North America, party of the second part, by the authorized representatives of the said Express Publishing Company and the Light Publishing Company, and the authorized representatives of the said Typographical Union.

Section 2. WITNESSETH: that from and after the 1st day of December 1928, and until the 31st day of July, 1933, and continuing thereafter until a new agreement shall have been made, the party of the first part binds itself to the employment in its composing room of members of the International Typographical Union. This shall include foremen, floor men, make-up men, proof readers, machinists, operators of type and line-setting and casting machines (not including pot feeders, wipers of said machines or boys employed to proof galleys).

Section 3. It is understood and agreed that all of the terms and conditions set forth in this contract shall, unless otherwise mutually agreed, remain effective and binding on the parties hereto until the expiration of this contract on the 31st day of July, 1933, except that the hours and rate of pay provided in this contract may be changed by negotiation between the parties to the contract, provided notice in writing is given by the party desiring the change to the other party to the contract at least sixty (60) days prior to the 1st day of August of any year during the term of this contract, and should no such notice be given, the rate of pay and hours shall remain as provided herein during the full term of the contract. Should the parties fail to reach an agreement as to a change of wages or hours proposed by either party, the matter shall be settled by arbitration in accordance with the arbitration clause of this contract.

Section 4. It is understood and agreed that should either party to this agreement desire a change in any of its provisions at its expiration, notice in writing shall be given to the other party to the contract at least thirty (30) days before its expiration, and should no such notice be given this contract shall remain in force and be binding on both parties for twelve (12) months after its expiration and the same provisions shall apply at the expiration of each year thereafter.

Section 5. It is understood and agreed that this contract contains all of the provisions and conditions concerning the relations between the parties hereto, and any laws or rules by either party affecting the other may become effective only by mutual consent during the life of this contract.

Section 6. The party of the first part is guaranteed under this contract against any strike or boycott on the part of the party of the second part, and against the encouragement, directly or indirectly, of any strike or boycott against the party of the first part, and party of the second part is guaranteed against lock out on the part of the publishers during the life of this contract, and it is mutually agreed that the validity of this contract shall not be dependent upon or affected by the obligations of either party to any other person or organization not a party to this contract.

Section 7. The publisher, through the foreman, shall select and employ all the help, and supervise and control all employees in the composing room, and journeymen and apprentices shall perform such work as he may direct. He may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, which must be conspicuously posted, and (4) to decrease the force; all persons

discharged under Clause 4, however, shall be reinstated in the reverse order from which they were laid off whenever the force is again increased. No man who has been discharged from the office shall be eligible to "sub" except by permission of the foreman. No man shall be allowed to leave the office or his work during working hours, except by permission of the foreman. It is agreed that the publisher, through the foreman, shall determine the number of men necessary for the conduct of their business, or to perform any work, or to operate any and all machines in the composition department.

Section 8. It is hereby mutually agreed that any question arising regarding the interpretation of the provisions of this contract, or any question that may arise as to a change of the wage scale or hours of this contract, or any question that may arise as to the provisions of a renewal of this contract, that cannot be settled by mutual agreement between the parties hereto within thirty (30) days from the time the question arises, shall be settled by arbitration. For this purpose an arbitration board shall be selected, composed of two representatives of the party of the first part, and two representatives of the party of the second part, with a fifth and disinterested party to be mutually selected by the four men so appointed. Upon the demand of either party to this contract, the question at issue shall be submitted to this board of arbitration and its decision shall be final and binding on both parties. Provided, that local union laws not affecting wages, hours and working conditions or the interests of the party of the first part, and the laws of the International Typographical Union not in conflict with the provisions of this contract shall not be subject to arbitration. Provided further, that should arbitration be resorted to in any matter in dispute, the rules laid down in the Code of Procedure of the Arbitration

Agreement of 1917-1922 between the American Newspaper Publishers Association and the International-Typographical Union shall govern the arbitration proceedings.

Section 9. It is hereby mutually agreed that if during the term of this contract a new arbitration agreement is concluded between the International Typographical Union and the American Newspaper Publishers Association, a local agreement thereunder will be immediately signed by the parties to this contract, and the provisions of this new arbitration agreement shall take the place of the provisions of Section 8.

SCALE OF WAGES.

Section 10. The following scale of wages shall remain in force during the life of this contract, unless changed in accordance with the provisions of Section 3.

Section 11. All journeymen members of the Union (except operators of type or line-setting or other keyboard machines) shall receive one dollar and twelve cents ($1.12) per hour for day work; and one dollar and eighteen cents ($1.18) per hour for night work.

Section 12. A minimum of eight hours, exclusive of lunch time, shall constitute a day's or night's work, except for machine operators, and six days or nights shall constitute a week's work; and where an employe, either time or machine man works more than eight (8) hours in any one day or night, or more than six (6) days or nights in any one week he shall receive time and one-half of the scale herein provided for the additional time. Where substitutes are not available over a period of 30 days time, men may be required thereafter to work more than 6 days a week at single price until the Union provides competent substitutes.

Section 13. Operators of type or line setting or other keyboard machines shall be paid on the piece basis, standard measurement, minimum thirteen ems pica per line, at the following rates:

Five and one-half point, per one thousand ems, twelve (12) cents for day work; and twelve and one-half (12½) cents for night work.

Six point, per one thousand ems, thirteen (13) cents for day work; and thirteen and one-half (13½) cents for night work.

Seven point, per one thousand ems, fifteen and one-half (15½) cents for day work; and sixteen (16) cents for night work.

Eight point, per one thousand ems, sixteen and one-half (16½) cents for day work; and seventeen and one-half (17½) cents for night work.

Faces larger than eight point shall be set on time at the operator's average.

Section 14. When type is set on slugs larger than the face of the type measurement shall be according to the face and not the slug, and the publisher shall be given the benefit of the extra space between the lines. Where the slug is two points or more over the face, the operator shall be entitled to one-half the extra space.

Section 15. A minimum of six and one-half (6½) hours, exclusive of lunch time, shall constitute a day's or night's work for machine operators working on a piece basis, and when an employe works more than eight (8) hours in any one day or night, he shall receive time and one-half of the scale herein provided.

Section 16. The day scale shall be paid for all shifts beginning after 7 a. m. and ending before 7 p. m. The night scale shall be paid for all shifts beginning after 1

p. m. and ending before 6 a. m., except that a shift starting between 12 o'clock midnight and 7 a. m. shall be paid one dollar ($1.00) in addition to the night scale.

TYPE MEASUREMENT.

Section 17. Straight leader work, border work, race results and entries, run-in programs, matter set in caps, bold face, and matter indented on one or both ends, etc., shall be paid for at the rate of price and one-half. Provided, that where parallel rule is used, double price shall prevail, or the work shall be done on time machines at option of office.

Section 17a. Matter containing two or more justifications shall be paid for at the rate of double price.

Section 17b. Where proper names, whether or not followed by titles or numerals, measuring ten lines or more, and whether separated by paragraph or not, appear in running order in copy, price and one-half shall prevail.

Section 17c. When copy files are made up for piece operators they become the property of that division of the chapel, and all hand-outs of whatever nature, excepting ring corrections, matter of greater width than single column, feature matter or matter of intricate nature impossible to set without changing of machine, are prohibited; provided, this shall not prevent foreman or copy-cutters from advancing "rush" matter.

Section 17d. Foreign languages, and dialects, shall be paid for at double price.

Section 17e. Where operators are required to transpose names and titles, or similar transpositions, double price shall prevail.

General Provisions.

Machine Operators.

Section 18. The standard of proficiency for an operator of a type setting machine or device covered by the stipulations of this contract shall be not less than five thousand five hundred (5,500) ems per hour, on type not larger than nonpareil.

Section 19. In judging the competency of an operator on a machine or in establishing an average, the test shall be on the run of the hook, and time lost through no fault of the operator shall be averaged at the rate of amount set. The usual rule of price and one-half and double price matter shall be observed.

Section 20. An operator who is paid at his average speed shall, upon demand of either the operator or the publisher, and without jeopardy to his situation, establish a new average. Such average shall be based upon the amount of type set working off the hook during the last six days out of fifteen days. An average thus established shall govern until a new average is established at the request of either the operator or the publisher.

Section 21. An operator employed other than on straight machine composition in any department of the composing room shall receive pay at his established average.

Section 22. All time lost on account of stoppage of machines, current, power or other causes, shall be paid at the operator's average; provided, that where the entire plant is down, the time or floor scale shall apply.

Section 23. All copy that is bad, or otherwise objectionable, shall be set at the operator's average; quality of copy shall be decided by the chapel chairman and foreman.

Section 24. Rings shall be paid for at the rate of two lines for one.

The following constitute rings: Changes from copy, all transpositions, the failure of letters to drop, or where letters sprinkle or come double, not the fault of the operator, and changes in proper names. The office may designate an office ring man and he shall be required to handle all rings on his established average.

Section 25. The office shall have style sheets posted and keep same corrected with all additions thereto in a conspicuous place, and said style sheets shall govern all composition.

General Provisions.

All Employes.

Section 26. Journeymen receiving more than the scale, when forced to work overtime, shall be paid price and one-half of the regular scale rate.

Section 27. A journeyman called (unless notified the previous day) to work before the first posted starting time or at an hour earlier than his regular time for showing up shall receive one dollar ($1.00) in addition to regular rate of pay for work performed, which shall not be less than a minimum day.

Section 28. A journeyman put to work after posted starting time on either day or night shift shall receive pay for a full day, and shall not to make up the hours, be kept later than the regular closing time.

Section 29. A journeyman going to work at regular starting time shall be entitled to a full day's work, but should he quit, or be excused from duty at his own request, or be discharged for cause, before the regular closing time,

he shall be paid only for the time employed. In no case shall an employe be laid off before regular closing time unless discharged for cause.

Section 30. If an employe is recalled to work within two (2) hours after time is up, he shall be paid for intervening time at the rate applicable for that time as if no stoppage had occurred, but if the recall occurs after more than two hours have elapsed, Section 29 or Section 32, as the case may be, shall govern.

Section 31. Double-headers: All journeymen working two shifts on Saturday and Saturday night on afternoon papers getting out a Sunday morning edition, shall be paid the regular night scale for the second shift plus 50 cents.

Section 32. Journeymen called to work on an extra on Sunday shall receive one dollar ($1.00) in addition to regular rate of pay for a minimum day. Employes found in the building and put to work shall not be entitled to the one dollar ($1.00).

Section 33. The time for lunch shall be fixed by the foreman at such time as to least interfere with the work of the office, provided, that no employe shall be required to work longer than five (5) hours without lunch. The lunch time shall not be less than thirty (30) minutes and not more than one (1) hour, and in no case shall lunch time be charged against the office.

Section 34. Regular starting time shall be posted before the first closing time each day for each shift of the following day.

35.

Section 36. All wages shall be paid in full at the end of each week. The office may designate the close of a financial week, and the regular pay day shall be not more than thirty-six (36) hours thereafter.

36.

Section 37. In all cases where journeymen are laid off permanently, or discharged for cause, before regular pay day, they shall be entitled to and receive within twenty-four (24) hours whatever sum may be due them.

37.

Section 38. In case of news matter or advertisements of local business houses either in the shape of type, linotype matter, or stereotype matrices, being borrowed or exchanged between newspapers or other offices in the City of San Antonio, not owned or controlled by the same person or company, or mats of local ads set in other offices, through lack of time or inability to procure help, the composition of the same shall be reproduced within thirty (30) days as near like the original as the material in the office can practically be utilized, provided, men are available to do the work without overtime. This, however, shall not be construed to cover the advertising of foreign or outside advertisers having no retail stores in San Antonio who furnish their own plates or matrices, nor shall it include comic section or matrix feature pages used in the paper.

38.

Section 39. The union reserves the right to refuse to execute all work received from or destined to unfair printing offices or publications. Struck work is hereby defined to be work for any person or concern other than the party of the first part, against whom a strike has been duly authorized by the International Typographical Union, or any printing office declared unfair by the Typographical Union.

39.

Section 40. The foreman shall have the right to call his force or any part of it to work at different hours, as the exigencies of the business may require; provided, that (except in emergency) employes shall be allowed twelve

hours rest between shifts. He may in emergency shift men temporarily from day work to night work or from night work to day work, and when the emergency has passed they shall immediately be transferred back. Such shifts shall not affect the priority of the employes for a day or night situation.

40.

Section 41. It is agreed that if any terms or customs affecting wages, hours or working conditions better or different than those given in this agreement, or any concessions whatever are allowed by the Union to any other San Antonio daily newspaper during the life of this contract, those said better or different terms, customs or concessions shall be allowed immediately to the publisher party to this contract if he so desires.

41.

Section 42. All type set under this contract is to be the property of the office for such use as it may desire

38.

except as provided in Section 39.

42.

Section 43. Wages of apprentices shall be fixed by the publisher for the first and second year. For the third year apprentices shall receive 42½% of the journeyman time scale. For the fourth year 55% and for the fifth year 75% of said time scale.

43.

Section 44. All rules governing working conditions shall apply to apprentices as covered in this agreement the same as for journeymen.

44.

Section 45. One apprentice may be employed on the floor for each five journeymen situations or majority fraction thereof; provided, that not more than three appren-

tices may be employed on the floor at any one time, nor shall an apprentice be placed at the head of any department.

45.

Section 46. A joint apprentice committee composed of two representatives named by the San Antonio daily newspapers, and two representatives of San Antonio Typographical Union No. 172, shall be formed to examine and determine all matters relating to apprentices. They shall act to enforce the conditions of the agreement covering apprentices, and shall have full power and authority at any time during the term of apprenticeship to terminate the apprenticeship of an apprentice who does not possess proper qualifications or show aptitude for the work. This committee shall meet jointly at the call of the chairman of each committee, at such time and place as may be determined, and equal representation of both parties shall constitute a quorum.

46.

Section 47. Apprentices shall be physically fit, shall have a common school education and shall be able to read manuscript intelligently.

47.

Section 48. The foreman and chairman of the chapel shall see that apprentices are afforded every opportunity to perfect themselves in all branches of the craft, and shall require heads of departments to see that they receive full instructions, as follows:

48.

Section 49. First year: Apprentice shall be employed at proofing galleys, straightening leads and slugs, holding copy and such other work as he may be assigned by the foreman, provided that at least three months of the first year shall be spent in holding copy.

48.

Section 49a. Second year: Apprentice shall be employed at least 50 per cent of his time in the ad room. This period to be devoted to teaching him the case, type faces, distribution, and all the rudiments of the trade.

48.

Section 49b. Third year: Apprentice shall be employed at least 75 per cent of his time in the ad room and in the head alley. This period to be devoted to teaching him all the intricate handiwork of the craft, including proper display of ads, use of borders and ornaments, marking out of type matter for machines, relation of type faces and their correct uses, etc. Beginning with the third year apprentices shall be enrolled in and complete the International Typographical Union Course of Lessons in Printing before being admitted as journeymen members of the union.

48.

Section 49c. Fourth year: Apprentice shall be employed full time on ad room and makeup work. This period to be devoted to mastering all the detail work in ad composition and a thorough training on forms, the latter to include placing of ads, makeup of news and editorial pages, classifications and makeup of liner pages, lockup of forms, for stereotype room, etc.

48.

Section 49d. Fifth year: During this year apprentice shall receive a total of at least six (6) months instruction on any and all typesetting and typecasting devices in use in the office where he is employed; at least three (3) months in the proof room in reading proof and holding copy and the remainder of the time in the laying out of advertisements and general composing room work, so that he may master every phase of ad construction. Provided, that no apprentice shall work on machines at piece work

at less than the journeymen's piece work scale. It shall be the duty of the chairman to report any violation of apprentice provisions.

49.

Section 50. In pursuance of the foregoing agreement reached by the Express Publishing Company, publishers of the San Antonio Express and San Antonio Evening News and the Light Publishing Company, publishers of the San Antonio Light and San Antonio Typographical Union No. 172, a subordinate of the International Typographical Union of North America, we, the undersigned officers of said organizations acting for and on behalf of same, hereby accept the foregoing preamble and scale of wages as herein arranged, the same to govern the parties hereto during the life of this contract, and affix our signatures and seals of our organizations this 22nd day of November, A. D., 1928.

Light Publishing Company

.....

Publisher.

Express Publishing Company

.....

President.

San Antonio Typographical Union No. 172

.....

President.

.....

Secretary.

- - - - - - - -

San Antonio, Texas
December 29, 1932.

San Antonio Typographical Union No. 172, through their authorized members of the Arbitration Board hereby agree to accept a ten per cent reduction in the rate of pay designated in the present contract dated November 22, 1928, between the Light Publishing Company, Express Publishing Company and San Antonio Typographical Union. This agreement to become effective as of January 1, 1933, and is to continue until the expiration of the contract. All other terms and conditions of the contract to remain unchanged.

For SAN ANTONIO PUBLISHERS
Frank G. Huntress
Wm. McIntosh
For SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
Geo. V. Schmitz
C. W. Satterfield
Arbitration Board.

- - - - - - -

July 30, 1935.

Meeting of the Arbitration Board, following members were present:

Mr. Frank G. Huntress, Mr. Wm. McIntosh, representing the Publishers and Mr. C. B. Rogers, Mr. A. T. Harris, representing the Union.

Mr. Huntress was elected temporary Chairman of the Board.

Mr. Harris was elected Secretary of the Board.

Contract as of 1928 read by Secretary.

Moved by Publishers, seconded by representatives of San Antonio Typographical Union No. 172:

We the undersigned members of the Arbitration Board do hereby agree that the present existing contract between

Express Publishing Company and San Antonio Light Publishing Company and the San Antonio Typographical Union No. 172 be renewed for a five year period beginning first day of August 1935 to and including the thirty-first day of July 1940.

It is further agreed that the wages, rate of pay and hours shall be as prevailing at present which is ten per cent less than originally stated in contract as of 1928.

It is further agreed that either party to this contract may upon ten days notice during the first year of this contract open the question of hours and wages, procedure to be as in Section 3 of contract.

The motion as written was accepted by unanimous vote of Board.

Minutes approved,

Frank G. Huntress
Wm. McIntosh
C. B. Rogers
A. T. Harris
Members of Arbitration Board

- - - - - - -

July 30th, 1935.

Moved by Publishers, seconded by representatives of the San Antonio Typographical Union No. 172:

We the undersigned members of the Arbitration Board do hereby agree that the present existing contract between Express Publishing Company and San Antonio Light Publishing Company and the San Antonio Typographical Union No. 172 be renewed for a five year period beginning first day of August 1935 to and including the thirty-first day of July 1940.

It is further agreed that the wages, rate of pay and hours shall be as prevailing at present which is ten per cent less than originally stated in contract as of 1928.

It is further agreed that either party to this contract may upon ten days notice during the first year of this contract open the question of hours and wages, procedure to be as in Section 3 of contract.

EXPRESS PUBLISHING COMPANY
By Frank G. Huntress President.
LIGHT PUBLISHING COMPANY
By Wm. McIntosh Publisher.
SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
By C. B. Rogers
By A. T. Harris

- - - - - - -

San Antonio, Texas.
July 7, 1937.

This agreement made and entered into this seventh day of July, 1937, by and between the Express Publishing Company, the Light Publishing Company and the San Antonio Typographical Union No. 172, that the wage-scale shall be increased to the following:

All journeymen members of the Union (except operators of type or line-setting or other keyboard machines) shall receive One Dollar and twelve cents ($1.12) per hour for day work; and One Dollar and eighteen cents ($1.18) per hour for night work.

Operators of type or line setting machines shall be paid:

Five and one-half point, per one thousand ems, twelve (12) cents for day work; and twelve and one-half (12½) cents for night work.

Six point, per one thousand ems, thirteen (13) cents for day work; and thirteen and one-half (13½) cents for night work.

Seven point, per one thousand ems, fifteen and one-half (15½) cents for day work; and sixteen (16) cents for night work.

Eight point, per one thousand ems, sixteen and one-half (16½) cents for day work; and seventeen and one-half (17½) cents for night work.

Faces larger than eight point shall be set on time at the operator's average.

This agreement to become effective as of August 1st, 1937, and is to continue until the expiration of the contract. All other terms and conditions to be a part of the contract and to remain unchanged.

EXPRESS PUBLISHING COMPANY
Frank G. Huntress President.

LIGHT PUBLISHING COMPANY
Wm. McIntosh Publisher.

SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
Paul E. V. Muret, President
J. L. Gilbert

BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 17 1940
CHARLES ELMORE CROPLEY
CLERK

No. 442

In the Supreme Court of the United States

OCTOBER TERM, 1940

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BLANK PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	7
Reasons for granting the writ	7
Conclusion	11
Appendix	12

CITATIONS

Cases:

Agwilines, Inc. v. *National Labor Relations Board*, 87 F. (2d) 146	10
Art Metals Construction Co. v. *National Labor Relations Board*, 110 F. (2d) 148	9
Globe Cotton Mills v. *National Labor Relations Board*, 103 F. (2d) 91	8
Hartsell Mills Co. v. *National Labor Relations Board*, 111 F. (2d) 291	9
H. J. Heinz Co. v. *National Labor Relations Board*, 110 F. (2d) 843, certiorari granted June 3, 1940, No. 73, present Term	11
National Labor Relations Board v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18	9
National Labor Relations Board v. *Bradford Dyeing Ass'n*, No. 588, last Term, decided May 20, 1940	7, 10, 11
National Labor Relations Board v. *Brown Paper Mill Co.*, 108 F. (2d) 867	10
National Labor Relations Board v. *Falk Corp.*, 308 U. S. 453	10
National Labor Relations Board v. *Griswold Mfg. Co.*, 106 F. (2d) 713	9
National Labor Relations Board v. *Highland Park Mfg. Co.*, 110 F. (2d) 632	9
National Labor Relations Board v. *Lane Cotton Mills Co.*, 111 F. (2d) 814	10
National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261	8, 10, 11
National Labor Relations Board v. *Pure Oil Co.*, 103 F. (2d) 407	10

Cases—Continued. Page

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576 9

National Labor Relations Board v. *Whittier Mills Co.*, 111 F. (2d) 474 10

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151 *et seq.*):

Sec. 7 13

Sec. 8 13

Sec. 10 14

Miscellaneous:

House Report No. 1147, 74th Cong., 1st Sess 9, 10

Senate Report No. 573, 74th Cong., 1st Sess 10

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Fifth Circuit, entered on May 7, 1940, insofar as that decree set aside and refused to enforce, or modified, an order of the Board issued against respondent.

OPINIONS BELOW

The opinion of the circuit court of appeals (R. I, 85–87) is reported in 111 F. (2d) 588. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. I, 52–73) are reported in 13 N. L. R. B. 1213.

JURISDICTION

The decree of the circuit court of appeals (R. I, 87–88) was entered on May 7, 1940. A petition for rehearing filed by the Board (R. I, 88–95) was denied on June 17, 1940 (R. I, 96). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon findings that an employer has refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may validly order the employer to cease and desist from such refusal to bargain, in addition to affirmatively requiring the employer to bargain collectively.

2. Whether a refusal to bargain collectively in violation of Section 8 (5) of the Act likewise constitutes an interference with the employees' exercise of their rights to self-organization and to bargain collectively through representatives of their own choosing, in violation of Section 8 (1) of the Act.

3. Whether, upon findings that an employer has refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may validly order the employer to

post in its plant appropriate notices to its employees stating its intention to comply with the Board's order.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are set forth in the Appendix, *infra,* pp. 13–14.

STATEMENT

Upon the usual proceedings,[1] the Board issued its findings of fact, conclusions of law, and order (R. I, 52–73). Omitting jurisdictional findings, as to which no question is raised, the facts, as found by the Board and as shown by the evidence, may be summarized as follows:[2]

The respondent company publishes two newspapers at St. Antonio, Texas (R. I, 54–55; R. III, 1–4). It is stipulated that the employees working in the editorial departments of both newspapers

[1] These, pursuant to Section 10 of the National Labor Relations Act, were: amended charge (R. I, 8–10), complaint (R. I, 10–15), answer (R. I, 16–22), hearing before a trial examiner (R. II, 1–69), filing of a brief by respondent with the trial examiner (R. I, 26), intermediate report of the trial examiner (R. I, 25–40), exceptions thereto by respondent (R. I, 41–49), and oral argument before the Board (R. I, 51).

[2] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence or stipulation of the parties.

constitute an appropriate unit for purposes of collective bargaining, and that at all times relevant herein the San Antonio Newspaper Guild was the exclusive bargaining representative of a majority of the employees in such unit (R. I, 56–57, 70–71; R. III, 5). On four occasions during the months of March, April, and May, 1938, the company met with representatives of the Guild for the ostensible purpose of bargaining collectively (R. I, 57–66; R. III, 14–22, 23–49, 62–103, 107–124). However, the company rejected each of the Guild's proposals on the bare ground that it was "unreasonable," or "unacceptable," or "unwarranted," or "impracticable" (R. I, 59–61, 64–65, 67; R. III, 25–26, 34, 114–115, 117–118, 122). The company would not specify in what respects the proposals were unacceptable or what changes would make them acceptable, and refused to submit any counterproposals, although requested by the Guild to do so (R. I, 61, 65–66, 67; R. III, 34–37, 84–85, 115). The Board found that the company's technique "was calculated to and did make any productive negotiations impossible" and that the company at no time had any intention of negotiating in good faith with the Guild or of entering into a collective agreement with it (R. I, 66–67). The Board concluded, accordingly, that the company had refused to bargain collectively in violation of Section 8 (5) and had thereby interfered with the employees' exercise of the rights guaranteed in Section 7 of the Act (R. I, 69, 71).

The Board further found that on April 4, 1938, during the negotiations mentioned above, Hall, secretary of the company, assembled the editorial employees and read to them a prepared statement, which, the Board concluded, amounted to an interference with the Guild's efforts to negotiate, and constituted a further violation of Section 8 (1) (R. I, 67–68, 71).

Upon these findings, the Board ordered the company to cease and desist (a) from refusing to bargain collectively with the Guild; and (b) from interfering with the exercise by its employees of the rights guaranteed in Section 7 of the Act. As affirmative action, the Board ordered the company (a) upon request, to bargain collectively with the Guild as the exclusive representative of its editorial employees, and, if an understanding were reached, to embody the understanding in a signed agreement if so requested by the Guild; (b) to post and maintain in conspicuous places within the plant notices to the employees stating that the company would cease and desist as required by the order and would bargain collectively with the Guild; and (c) to notify the Board's Regional Director concerning what steps the company had taken to comply with the order (R. I., 71–73).

On January 22, 1940, the Board filed in the court below a petition for enforcement of its order against the company. On May 7, 1940, the court handed down its opinion holding that the Board had validly found a refusal to bargain collectively,

but that the statement read to the employees did not violate Section 8 (1) (R. I, 85–87).[3] On the same day, the court entered a decree enforcing the provision of the Board's order requiring the company, as affirmative action, to bargain collectively with the Guild upon request, and the provision requiring notification to the Regional Director concerning steps taken to comply with the order. But the court denied enforcement to the entire cease and desist order, and it substituted for the requirement that notices be posted in the plant a provision ordering the company merely to notify the Guild of its willingness to comply with the order (R. I, 87–88). On June 17, 1940, the court denied, without opinion, a petition for rehearing filed by the Board (R. I, 96).[4]

[3] While we think the court's holding that the statement did not violate the Act is erroneous, we do not seek review of its decision in that respect, since it turns on facts peculiar to this case and since, in the view we take, the refusal to bargain is sufficient alone to support the Board's order in its entirety.

[4] In its petition for rehearing the Board urged, *inter alia*, (a) that a violation of Section 8 (5) having been found by the Board and its finding having been sustained by the court, the order requiring the company to cease and desist from its refusal to bargain was mandatory under Section 10 (c) of the Act and under the decisions of this Court; (b) that a refusal to bargain has been consistently held to violate Section 8 (1) as well as Section 8 (5), by the court below and the other circuit courts of appeals, and that the order requiring the company to cease and desist from interfering with the rights of its employees was therefore likewise mandatory; and (c) that the provision requiring notices to be posted was

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In refusing to enforce the cease and desist rovisions of the Board's order.

2. In failing to hold that a refusal to bargain llectively in violation of Section 8 (5) of the Act kewise constitutes an interference with the emloyees' exercise of the rights guaranteed in Secon 7 of the Act, thereby violating Section 8 (1) the Act.

3. In refusing to enforce the provision of the oard's order requiring the company to post in its lants notices to its employees that it will comply ith the Board's order, and in substituting for that rovision a requirement that the company notify he Guild of its willingness to comply.

4. In refusing to enforce the order of the Board full.

REASONS FOR GRANTING THE WRIT

1. Although the court below approved the oard's finding that the company refused to bar-

---

lid under the decisions of this Court and of the court low and the other circuit courts of appeals. Finally, the tention of the court was called to the opinion of this Court *National Labor Relations Board* v. *Bradford Dyeing ss'n*, No. 588, last Term, decided May 20, 1940, wherein this ourt stated that where a fair hearing has been had, the ndings of unfair labor practices are supported by substanal evidence, and the remedy ordered is appropriate, "obeence to the statutory law on the part of the Court of ppeals requires the court to grant enforcement of the oard's order" (R. 88–95).

gain collectively with the authorized representative of its employees, in violation of Section 8 (5) of the Act, and although the court enforced the Board's affirmative bargaining order based on this finding, it refused, without explanation, to enforce the corresponding cease and desist provision of the Board's order. The Board having found a violation of Section 8 (5), the cease and desist order was mandatory upon it under Section 10 (c) of the Act. See *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. The failure of the court below to enforce the cease and desist provision is contrary to the plain terms of the Act and departs from the uniformly settled practice under it. No other court has ever, while sustaining a finding of a violation of the Act, refused to enforce an order to cease and desist from the violation.[5]

2. The court's failure to hold that a refusal to bargain collectively in violation of Section 8 (5) of the Act likewise violates Section 8 (1), and its consequent refusal to enforce the provision of the

[5] In one prior case the court below, likewise without explanation in its opinion, denied enforcement to the cease and desist provisions of the Board's order although it upheld the finding of a refusal to bargain in violation of Section 8 (5) and enforced the affirmative bargaining order. *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91 (C. C. A. 5th). But in all of its many other decisions under the Act the court, if it approved the Board's findings of unfair labor practices, enforced the cease and desist orders based thereon.

order requiring the company to cease and desist from interfering with the employees' exercise of the rights guaranteed by Section 7, is in conflict with numerous decisions of other circuit courts of appeals. *Art Metals Construction Co.* v. *National Labor Relations Board,* 110 F. (2d) 148, 150–151 (C. C. A. 2d), overruling in this respect *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862, 869 (C. C. A. 2d), certiorari denied, 304 U. S. 576; *National Labor Relations Board* v. *Griswold Mfg. Co.,* 106 F. (2d) 713, 715–716 (C. C. A. 3d); *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 110 F. (2d) 632, 639 (C. C. A. 4th); *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291, 292 (C. C. A. 4th); *National Labor Relations Board* v. *Biles-Coleman Lumber Co.,* 98 F. (2d) 18, 22–23 (C. C. A. 9th).[6]

[6] These decisions, holding that a refusal to bargain collectively within the meaning of Section 8 (5) likewise interferes with, restrains, and coerces the employees in violation of Section 8 (1) are supported by the legislative history of the Act. In its report on the bill which became the National Labor Relations Act, the Committee on Labor of the House of Representatives said (H. Rept. No. 1147, 74th Cong., 1st Sess., p. 17):

"The succeeding unfair labor practices are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1)."

See also Senate Report No. 573, 74th Cong., 1st Sess., p. 9.

3. The court's refusal to require the company to post any notices directed to its employees is likewise a departure from the settled practice in all of the circuit courts of appeals and in this Court.[7] The Board's authority to require the posting of appropriate notices directed to the employees is now settled. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267; *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 462–463; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, No. 588, last Term, decided May 20, 1940. Instead of enforcing this valid provision, the court below, exercising the Board's "judgment and discretion * * * in choosing the particular affirmative re-

---

[7] While the circuit courts of appeals have differed concerning the form of notice which may be required, all of them have agreed that some form of notice directed to the employees may be ordered, and in cases where the particular form was disapproved the notices were not eliminated but modified.

The legislative history of the Act expressly mentions the "posting of appropriate bulletins" as affirmative action which the Board may order. House Report No. 1147, 74th Cong., 1st Sess., p. 24.

Prior to its decision in the present case the court below uniformly enforced provisions requiring notices directed to the employees to be posted by the employer. *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146; *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497; *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 871–872; *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474; *National Labor Relations Board* v. *Lane Cotton Mills Co.*, 111 F. (2d) 814.

lief to be ordered" (the *Pennsylvania Greyhound* case, *supra,* at p. 265), framed a provision which omits all notification to the employees, and thus falls "far short of conveying 'to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations.'" The *Falk* case, *supra,* at 463.[8]

CONCLUSION

The decision of the court below, in refusing enforcement, without explanation, to provisions of the Board's order which are of established validity, departs from proper judicial procedure in respects which are important to the uniform enforcement of the Act. Compare *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* No. 588, last Term, decided May 20, 1940. For these reasons we submit that this petition for a writ of certiorari should be granted.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1940.

---

[8] In *H. J. Heinz Co.* v. *National Labor Relations Board,* 110 F. (2d) 843 (C. C. A. 6th), certiorari granted June 3, 1940, No. 73, present Term, the court said (at p. 849):

The employees' need of assurance probably always justifies an order to the employer to post notices that he will bargain collectively with a particular union, etc. * * *

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.
>
> * * * * *

SEC. 10. (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1949

BLANK PAGE

BLANK PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	7
Summary of argument	7
Argument:	
I. The cease-and-desist provisions of the Board's order are valid	9
II. The provision of the Board's order requiring respondent to post notices in its plant is valid	18
Conclusion	21
Appendix A	22
Appendix B	24

CITATIONS

Cases:

Art Metals Const. Co. v. *National Labor Relations Board*, 110 F. (2d) 148	14, 19
Hartsell Mills Co. v. *National Labor Relations Board*, 111 F. (2d) 291	15, 19
H. J. Heinz Co. v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941	14, 19
International Association of Machinists v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940	12, 20
National Labor Relations Board v. *American Oil Co.*, 114 F. (2d) 1009	17
National Labor Relations Board v. *Arcade Sunshine Co.* (App. D. C.), decided December 9, 1940	19
National Labor Relations Board v. *Biles Coleman Lumber Co.*, 98 F. (2d) 18	15
National Labor Relations Board v. *Bradford Dyeing Ass'n*, 310 U. S. 318	10, 18
National Labor Relations Board v. *Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, certiorari denied, 310 U. S. 651	19
National Labor Relations Board v. *Elkland Leather Co.*, 114 F. (2d) 221, certiorari denied, No. 496, this Term	19
National Labor Relations Board v. *Falk Corporation*, 308 U. S. 453	8, 20

Cases—Continued. Page

National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U. S. 240 16

National Labor Relations Board v. *Griswold Mfg. Co.*, 106 F. (2d) 713 15

National Labor Relations Board v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 15

National Labor Relations Board v. *Lane Cotton Mills Co.*, 111 F. (2d) 814 15

National Labor Relations Board v. *Link-Belt Co.*, No. 235, this Term, decided January 6, 1941 10

National Labor Relations Board v. *National Motor Bearing Co.*, 105 F. (2d) 652 17

National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 ..... 10, 18, 20

National Labor Relations Board v. *Pure Oil Co.*, 103 F. (2d) 497 17

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576 15

National Labor Relations Board v. *Swift & Co.*, 108 F. (2d) 988 17

National Labor Relations Board v. *Swift & Co.* (C. C. A. 8), decided November 20, 1940 16

National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206 10

National Labor Relations Board v. *Whittier Mills Co.*, 111 F. (2d) 474 15

National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350 10

Phelps Dodge Corp. v. *National Labor Relations Board*, 113 F. (2d) 202 20

Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548 ..... 16, 17

Virginian Railway Co. v. *System Federation No. 40*, 300 U. S. 515 17

Statutes:

National Industrial Recovery Act, c. 90, 48 Stat. 195, Sec. 7 14

National Labor Relations Act, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151 *et seq.*:

Sec. 7 ..... 11, 12, 14, 15, 16, 17, 22

Sec. 8 ..... 5, 9, 10, 11, 12, 13, 14, 15, 17, 22

Sec. 9 22

Sec. 10 ..... 3, 9, 10, 17, 18, 23

Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, 45 U. S. C., Secs. 151–163 ..... 16, 17

Miscellaneous:

H. Rept. No. 1147, 74th Cong., 1st Sess. 13, 14, 18

S. Rept. No. 573, 74th Cong., 1st Sess. 13

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. I., 85–87)[1] is reported in 111 F. (2d) 588. The findings of fact, conclusions of law, and order of the National Labor Re-

[1] The record is composed of four volumes. Volume I consists of the formal pleadings and proceedings before the Board and in the court below; Volume II comprises the testimony taken at the hearing; and Volume III comprises a stipulation and attached exhibits introduced at the hearing. Volume IV is a copy of a contract between respondent and a labor organization not connected with this case, and is not referred to in this brief.

lations Board (R. I., 52–73) are reported in 13 N. L. R. B. 1213.

JURISDICTION

The decree of the Circuit Court of Appeals (R. I., 87–88) was entered on May 7, 1940. A petition for rehearing filed by the Board (R. I., 88–95) was denied on June 17, 1940 (R. I., 96). The petition for a writ of certiorari was filed September 17, 1940, and granted November 12, 1940. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon findings that an employer has refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may order the employer to cease and desist from such refusal to bargain, in addition to affirmatively requiring the employer to bargain collectively.

2. Whether a refusal to bargain collectively in violation of Section 8 (5) of the Act likewise constitutes a violation of Section 8 (1) of the Act, forbidding employers to interfere with, restrain, or coerce employees in their free exercise of the rights of self-organization and of collective bargaining through representatives of their own choosing.

3. Whether, upon findings that an employer has

refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may validly order the employer to post in its plant appropriate notices to its employees stating its intention to comply with the cease and desist and affirmative provisions of the Board's order.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are set forth in Appendix A.

STATEMENT

Upon the usual proceedings,[2] the Board issued its findings of fact, conclusions of law, and order (R. I, 52–73). The facts, as found by the Board and as shown by the evidence, may be summarized as follows.[3]

Respondent publishes two newspapers at San Antonio, Texas (R. I., 54–55; R. III, 1–4). It

[2] Pursuant to Section 10 of the National Labor Relations Act, these were: amended charge (R. I, 8–10), complaint (R. I, 10–15), answer (R. I, 16–22), hearing before a trial examiner (R. II, 1–69), filing of a brief by respondent with the trial examiner (R. 1, 26), intermediate report of the trial examiner (R. I, 25–40), exceptions thereto by respondent (R. I, 41–49), and oral argument before the Board (R. I, 51).

[3] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence or stipulation of the parties.

is stipulated that the employees in the editorial departments of both newspapers constitute an appropriate unit for purposes of collective bargaining, and that at all relevant times a majority of those employees had designated the San Antonio Newspaper Guild to act as their bargaining representative (R. I, 56–57, 70–71; R. III, 5). On four occasions during the months of March, April, and May, 1938, respondent met with representatives of the Guild for the ostensible purpose of bargaining collectively (R. I., 57–66; R. III, 14–22, 23–49, 62–103, 107–124). However, respondent rejected each of the Guild's proposals on the bare ground that it was "unreasonable," or "unacceptable," or "unwarranted," or "impracticable" (R. I, 59–61, 64–65, 67; R. III, 25–26, 34, 114–115, 117–118, 122). Respondent would not specify in what respects the proposals were unacceptable or what changes would make them acceptable, and refused to submit any counterproposals, although requested by the Guild to do so (R. I, 61, 65–66, 67; R. III, 34–37, 84–85, 115). The Board found that respondent's technique "was calculated to and did make any productive negotiations impossible" and that respondent at no time had any intention of negotiating in good faith with the Guild or of entering into a collective agreement with it (R. I, 66–67). Accordingly, the Board concluded that respondent had refused to bargain collectively in violation of Section 8 (5) and that this refusal

to bargain also interfered with the employees' exercise of the rights guaranteed in Section 7, in violation of Section 8 (1) (R. I, 69, 71).

The Board further found that on April 4, 1938, during the negotiations mentioned above, Hall, respondent's secretary, assembled the editorial employees and read to them a prepared statement, which, the Board concluded, amounted to an interference with the Guild's efforts to negotiate, and constituted a further violation of Section 8 (1) (R. I, 67–68, 71).

Upon these findings, the Board issued an order (R. I, 71–73) which for ready reference is printed in full in Appendix B (*infra,* pp. 24–25). The order requires respondent to cease and desist (a) from refusing to bargain collectively with the Guild; and (b) from in any manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act. As affirmative action which it found would effectuate the policies of the Act, the Board ordered respondent (a) upon request, to bargain collectively with the Guild as the exclusive representative of its editorial employees, and, if an understanding were reached, to embody it in a signed agreement if so requested by the Guild; (b) to post and maintain for sixty days in conspicuous places within the plant notices to the employees stating that respondent would cease and desist as

required by the order and would bargain collectively with the Guild; and (c) to notify the Board's Regional Director concerning the steps respondent had taken to comply with the order.

On January 22, 1940, the Board filed in the court below a petition for enforcement of its order against respondent (R. I, 1–5). On May 7, 1940, the court handed down its opinion holding that the Board had validly found a refusal to bargain collectively but that the statement read to the employees (*supra*, p. 5) did not violate Section 8 (1) (R. I, 85–87).[4] On the same day, the court entered a decree (R. I, 87–88) enforcing the provision of the Board's order requiring respondent, as affirmative action, to bargain collectively with the Guild upon request, and the provision requiring notification to the Regional Director concerning steps taken to comply with the order. But the court denied enforcement to both cease and desist provisions and substituted for the affirmative requirement that notices to the employees be posted in the plant a provision ordering respondent to notify the Guild of its willingness to bargain collectively (R. I, 87–88). On June 17, 1940, the court denied, without opinion, a petition for rehearing filed by the Board (R. I, 88–95, 96).

[4] Since the petition for certiorari did not request review of the holding with respect to this statement (Pet. 6, note 3), the question whether or not respondent violated the Act by making the statement is not before this Court.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In failing to enforce the two cease and desist provisions of the Board's order.

2. In failing to enforce the provision of the Board's order requiring respondent to post notices to its employees stating that it would comply with the Board's order, and in substituting for that provision a requirement that respondent notify the Guild of its willingness to bargain collectively.

SUMMARY OF ARGUMENT

1. The court below sustained the Board's finding that respondent had refused to bargain collectively with the Guild in violation of Section 8 (5) of the Act. Under Section 10 (c) of the Act the Board was required to order the respondent to cease and desist from this unfair labor practice, and under Section 10 (e) the court below was required to enforce that order. Its failure so to do constituted patent error.

The court below also erred in failing to enforce the provision of the Board's order requiring the respondent to cease and desist from further violation of Section 8 (1). Respondent's refusal to bargain constituted an unfair labor practice in violation, not only of Section 8 (5), but also of Section 8 (1). Section 8 (1) forbids any interference with any of the rights guaranteed to employees by Section 7 of the Act; one of those rights is the right to

bargain collectively. Under the plain terms of the statute, therefore, a refusal to bargain collectively constitutes a violation of Section 8 (1). The legislative history of the statute establishes that the specific prohibitions of Section 8 (2), (3), (4), and (5) were not intended to limit the scope of the general prohibition contained in Section 8 (1).

The fact that the Board's order required respondent to cease and desist from "in any manner" violating Section 8 (1) does not justify the action of the court below. The decisions of this Court establish that the Board may properly impose a prohibition substantially in the language of the statute. The order must be broad enough to prevent evasion by the mere variation of tactics; an order restricted to the precise type of interference or restraint exercised in the past would make the court's decree an ineffective sanction for securing obedience to the Act.

2. The provision of the order requiring respondent to post in its plant bulletins stating that it will comply with the Board's order is in the form expressly approved by this Court in *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 462–463. The action of the court below in substituting for this provision a requirement that the respondent merely notify the Guild that it will bargain collectively constituted an improper exercise by the court of the judgment vested by Congress in the Board to determine the

particular type of relief required. Furthermore, the relief devised by the court below on its own motion plainly constituted less than that which the Board reasonably found necessary in the circumstances of this case.

ARGUMENT

I

THE CEASE-AND-DESIST PROVISIONS OF THE BOARD'S ORDER ARE VALID

1. *The requirement that respondent cease and desist from refusing to bargain collectively with the Guild.*—The court below sustained the Board's findings that respondent refused to bargain collectively with the Guild and thereby engaged in an unfair labor practice violative of Section 8 (5) of the Act;[5] upon that basis, the court enforced the remedial affirmative provision of the Board's order (*infra,* pp. 24–25), directing respondent so to bargain. The court nevertheless failed to enforce the negative provision of the order (*infra,* p. 24) requiring respondent to cease and desist from refusing to bargain.

The failure of the court below to enforce the cease-and-desist provision constituted patent error. Under Section 10 (c) of the Act it is "manda-

[5] The question of the sufficiency of the evidence is not before this Court, since the respondent has not petitioned for a review of the decision below.

tory" upon the Board to issue a cease-and-desist order directed to each unfair labor practice found.[6] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; cf. *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 363. Since the order requiring respondent to cease and desist from its refusal to bargain collectively was clearly "within the compass of the power given [the Board] by Congress," the court was required to enforce it upon petition by the Board under Section 10 (e) of the Act. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 213; *National Labor Relations Board* v. *Link-Belt Co.*, No. 235, this Term, decided January 6, 1941.

2. *The requirement that respondent cease and desist from interference, restraint, or coercion.*— Respondent's refusal to bargain collectively constituted a violation not only of Section 8 (5) but also a violation of Section 8 (1), and the Board therefore properly ordered respondent to cease

---

[6] Section 10 (c) provides, in part, as follows:

"* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice * * *."

and desist from further violating Section 8 (1), as well as from further violating Section 8 (5). Under Section 8 (1), it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of any of the rights of self-organization and collective bargaining guaranteed in Section 7. The Board found that by refusing to bargain collectively with the Guild, respondent "interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" (R. I., 69). Unless the Board erred in making this finding, upon which question the opinion below is silent, it is apparent that issuance of the cease and desist order restraining violations of Section 8 (1) was "mandatory" upon the Board for the reasons already stated:

The plain language of the statute, the policy which it seeks to effectuate, and its legislative history all clearly establish that a refusal to bargain collectively not only constitutes an unfair labor practice in violation of Section 8 (5), but also constitutes an unfair labor practice in violation of Section 8 (1). Section 8 (1) prohibits any interference with or restraint of employees in the exercise of the rights guaranteed to them by Section 7; one of the rights expressly guaranteed by Section 7 is the right to bargain collectively. It follows, therefore, as a matter of course that a refusal to bargain collectively is an interference

with or restraint upon the bargaining right guaranteed to employees by Section 7 and is, therefore, an unfair labor practice violative of Section 8 (1).

Moreover, a refusal to bargain interferes with the right of self-organization guaranteed by Section 7 by stultifying the preliminary action of the employees in forming or joining a labor organization and in arriving at a majority designation of a bargaining representative. The sole objective of such organizational steps is to obtain collective bargaining; consequently, a refusal to bargain when such steps have been compieted interferes with the right to self-organization, contrary to Section 8 (1), just as effectively as when efforts to organize are met at the outset by the interposition of an employer-controlled union or by discriminatory discharges. Indeed, it is precisely because an unremedied refusal to bargain leaves the employees "subject to improper restraints" and without "compiete freedom of choice", and thus has an adverse "effect on the development of collective bargaining", that a claim of shift or loss of majority status after the refusal may be disregarded. *International Association of Machinists* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940. In the present case respondent's adherence to what the court below termed (R. I. 86) a "determination in advance not to agree to anything", was sham bargaining which was calculated to, and inevitably

did, discourage and deter the employees from joining or remaining members of the Guild, or from otherwise designating that organization as their representative, and, quite possibly, from any self-organization at all for purposes of collective bargaining with respondent.

The legislative history of the Act precludes any contention that Congress, by expressly defining a refusal to bargain collectively as an unfair labor practice in Section 8 (5) of the Act, intended to exclude such a refusal from the general forms of interference, restraint, and coercion prohibited by Section 8 (1). The Committee reports establish precisely the contrary. The House Committee on Labor stated that the four subdivisions of Section 8 following 8 (1)—

> are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1).[7]

---

[7] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 17. To the same effect, the Senate Committee on Education and Labor said (S. Rep. No. 573, 74th Cong., 1st Sess., p. 9): "The four succeeding unfair-labor practices are designed not to impose limitations or restrictions upon the general guaranties of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome."

The Committee further observed that Sections 7 and 8 of the National Labor Relations Act are re-enactments of "Section 7 (a), as it now appears in the National Industrial Recovery Act, * * * amplified by the specific prohibition of certain unfair-labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a)."[8] Since a refusal to bargain collectively with a representative selected by a majority of the employees had uniformly been held to violate Section 7 (a) of the Recovery Act (see *H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941), it is plain that Congress contemplated that such a refusal would interfere with the rights guaranteed in Section 7 of the National Labor Relations Act and therefore would constitute a violation of Section 8 (1) of that statute.

The Circuit Courts of Appeals for the Second, Third, Fourth, and Ninth Circuits have held that a refusal to bargain collectively in violation of Section 8 (5) likewise constitutes interference, restraint, and coercion in violation of Section 8 (1) and warrants a corresponding cease and desist order. *Art Metals Const. Co.* v. *National Labor*

[8] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 7. Section 7 (a) of the National Industrial Recovery Act provided, in part, that "* * * employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *." (48 Stat. 195, 198).

Relations Board, 110 F. (2d) 148, 150–151 (C. C. A. 2), overruling in this respect *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862, 869 (C. C. A. 2), certiorari denied, 304 U. S. 576; *National Labor Relations Board* v. *Griswold Mfg. Co.,* 106 F. (2d) 713, 715–716 (C. C. A. 3); *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 110 F. (2d) 632, 639 (C. C. A. 4); *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291, 292 (C. C. A. 4); *National Labor Relations Board* v. *Biles Coleman Lumber Co.,* 98 F. (2d) 18, 22–23 (C. C. A. 9). The court below also apparently adopted this view in *National Labor Relations Board* v. *Lane Cotton Mills Co.,* 111 F. (2d) 814, 816, and in *National Labor Relations Board* v. *Whittier Mills Co.,* 111 F. (2d) 474, 479.[9]

If the Board could properly issue a cease and desist order directed to unfair labor practices committed by respondent in violation of Section 8 (1) of the Act, it is plain that the order requiring respondent to cease and desist from "in any man-

[9] In the *Lane Cotton Mills* case the court said (111 F. (2d), at p. 816): "The respondent's flat refusal to bargain with the T. W. O. C. or its committee supports the finding that Lane had interfered with its employees in the exercise of the rights guaranteed by Section 7 by refusing to bargain collectively within the meaning of Section 8 (5)." In the *Whittier Mills* case the court held that a refusal to bargain collectively in violation of Section 8 (5) "interfered with and coerced" the employees in violation of Section 8 (1) (111 F. (2d), at p. 479).

ner" interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act, is appropriate in form. The Board may validly impose a "prohibition substantially in the language of the statute". *National Labor Relations Board* v. *Swift & Co.*, decided November 20, 1940 (C. C. A. 8). In *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 262, this Court stated that the Board's order "properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization". Similarly in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, the Court upheld, over the objection that it was too general in terms (281 U. S., at p. 552), an injunction framed substantially in the terms of Section 2, subdivision Third of the Railway Labor Act,[10] so as to restrain the employer "from in any way or manner interfering with, influencing, intimidating, or coercing" its employees in the free exercise of their rights of self-organization and to select collective bargaining representatives (281 U. S. at 555–556n). The

[10] Act of May 20, 1926, c. 347, 44 Stat. 577, 45 U. S. C. §§ 151–163. Section 2, subdivision Third reads, in part, as follows: "Third. Representatives, for the purposes of this Act, shall be designated by the respective parties * * * without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

Court held that Section 2, subdivision Third imposed a "definite statutory prohibition of conduct" and that the decree did not go beyond "proper enforcement of the provision" (281 U. S. at 567, 568, 571). This decision was subsequently relied upon in *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 543–544, to uphold a decree enjoining a carrier from "any interference * * * with the free choice of representatives by its employees".[11]

The necessity of an order cast in the terms of Sections 8 (1) and 7 of the National Labor Relations Act is apparent. If Section 10 (c) of the Act is interpreted as authorizing the Board to require the abatement only of the particular type of restraint in which the employer has engaged, he is free to set at naught the order and the decree enforcing it by varying the tactics, if not the purpose, of his interference. An order "formed and phrased to prevent" evasion is warranted. *National Labor Relation Board* v. *Pure Oil Co.,* 103 F. (2d) 497, 498 (C. C. A. 5).

The failure of the court below to enforce the cease and desist provisions of the Board's order was not in accord with the intent of Congress, plainly expressed in Section 10 of the Act, that

[11] See also *National Labor Relations Board* v. *National Motor Bearing Co.,* 105 F. (2d) 652, 660–661 (C. C. A. 9); *National Labor Relations Board* v. *American Oil Co.,* 114 F. (2d) 1009 (C. C. A. 4). But *cf. National Labor Relations Board* v. *Swift & Co.,* 108 F. (2d) 988, 990 (C. C. A. 7).

those who have engaged in unfair labor practices should be placed under the sanction of a judicial decree effective to prevent interference with exercise of the rights guaranteed to employees. The cease and desist provisions are entirely valid and should have been enforced.

II

THE PROVISION OF THE BOARD'S ORDER REQUIRING RESPONDENT TO POST NOTICES IN ITS PLANT IS VALID

The court below failed to enforce the provision (R. I., 72) of the Board's order requiring respondent to post in its plant notices to its employees stating that it would comply with the cease and desist and affirmative provisions of the order. Without explanation, the court substituted for this provision a requirement (R. I., 88) that respondent notify the Guild of its willingness to comply with the order to bargain collectively.

It is settled that the Board is authorized to require the posting of appropriate notices directed to the employees. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 343–344.[12] Plainly,

[12] The House Committee on Labor, in recommending enactment of the bill which became the National Labor Relations Act, mentioned the "posting of appropriate bulletins" as one type of affirmative action which the Board might require pursuant to Section 10 (c). H. Rep. No. 1147, 74th Cong., 1st Sess., p. 24.

there was no valid ground upon which the court below could have refused to require the posting of notices of any kind. Further, the particular form of notice ordered by the Board in the present case was expressly approved in *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 462–463, and orders of the Board requiring the posting of substantially identical notices have been enforced by this Court and the Circuit Courts of Appeals, including the court below, in dozens of cases.[13]

Even were the court below of the opinion that the requirement which its decree substituted for the no-

[13] Despite the decision in the *Falk* case, the Circuit Court of Appeals for the Second Circuit has expressed the view that an order of the Board requiring the posting of notices should not require the employer to state that he "will cease and desist" from the unfair labor practices found, because this implied a confession of guilt, but that he should be required to state instead that he would not commit such unfair labor practices. *Art Metals Const. Co.* v. *National Labor Relations Board*, 110 F. (2d) 148, 151–152; see also *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. (2d) 291, 293 (C. C. A. 4th). But see *National Labor Relations Board* v. *Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, 871 (C. C. A. 5th), certiorari denied, 310 U. S. 651; *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843, 850 (C. C. A. 6), affirmed, January 6, 1941, No. 73, this Term; *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. (2d) 221 (C. C. A. 3), certiorari denied, November 18, 1940, No. 496, this Term; *National Labor Relations Board* v. *Arcade Sunshine Co.*, decided December 9, 1940 (App. D. C.). This question is no longer of importance because the Board has changed its practice and now provides in all cases that the employer's notices state that he "will not engage in the conduct from which he is ordered to cease and desist" rather than that he "will cease and de-

tice provision of the Board's order was sufficient to dissipate the effects of respondent's unfair labor practices, the court was without authority to exercise the Board's "judgment and discretion * * * in choosing the particular affirmative relief to be ordered" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265); the Board had exercised its "expert judgment as to ways and means of protecting the freedom of choice guaranteed to the employees by the Act" (*International Association of Machinists* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940), and it was for the court to enforce the relief so ordered if it was within the Board's authority.

The relief devised by the court on its own motion plainly constituted less than that which the Board reasonably found necessary in the circumstances of this case: all notification to the employees was omitted and the required affirmation to the Guild omitted any statement or implication that respondent would no longer commit the unfair labor practices in which it was found to have engaged. In short, the provision devised by the court "neither renounced the company's

---

sist." To avoid controversy on a point which is no longer of importance in view of the Board's present practice, the Board will not object, if respondent so requests, to a modification of the notice provision of the order so as to conform with the Board's present practice. Cf. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 113 F. (2d) 202, 204 (C. C. A. 2d).

unlawful practices nor promised their abandonment" and "fell far short of conveying 'to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations.'" *National Labor Relations Board* v. *Falk Corporation, supra,* at 462–463. The policies of the Act were not served by substitution of the limited notification to the Guild for the appropriate notices to the employees ordered by the Board.

CONCLUSION

It is respectfully submitted that the judgment of the court below, insofar as it fails to enforce and modifies the order of the Board, should be reversed, and the cause remanded with directions to enforce the order in full.

FRANCIS BIDDLE,
Solicitor General.
RICHARD H. DEMUTH,
Special Assistant to the Attorney General.
ROBERT B. WATTS,
General Counsel,
LAURENCE A. KNAPP,
Associate General Counsel,
MORTIMER B. WOLF,
ROMAN BECK,
Attorneys,
National Labor Relations Board.

JANUARY 1941.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at

any time to present grievances to their employer.

* * * * *

SEC. 10. (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

APPENDIX B

The Board's order is as follows:

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Express Publishing Company, San Antonio, Texas, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the San Antonio Newspaper Guild as

the exclusive representative of the city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News, with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in a signed agreement, if requested to do so by the Guild;

(b) Post immediately notices to its employees in conspicuous places within the plant, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting; stating (1) that respondent will cease and desist as aforesaid, and (2) that the respondent will bargain collectively with San Antonio Newspaper Guild as the representative of its city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, in the editorial departments of the San Antonio News and San Antonio Express, with respect to rates of pay, hours of employment, and other conditions of employment and that if an understanding is reached on any such matters the respondent will embody said understanding in a signed agreement, if requested to do so by the Guild;

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

U. S. GOVERNMENT PRINTING OFFICE: 1941

BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

EXPRESS PUBLISHING COMPANY,
Respondent.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR EXPRESS PUBLISHING COMPANY.

LEROY G. DENMAN,
Attorney for Respondent.

JUDD & DETWEILER, INC., PRINTERS, WASHINGTON, D. C.

BLANK PAGE

INDEX

Opinions below 1

Statement 2-6

Propositions 6

Argument:

On 1st proposition 7-14

On 2nd proposition 15-17

On 3rd proposition 17-23

Conclusion 23-25

AUTHORITIES

Burlington, etc. Co. vs. N. L. R. B., 104 Fed. (2d) 736 21

N. L. R. B. vs. Abell Co., 97 Fed. (2d) 951 21

Swift & Co. vs. N. L. R. B., 106 Fed. (2d) 87 21

BLANK PAGE

IN THE

Supreme Court of the United States

October Term, 1940.

No. 442

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

EXPRESS PUBLISHING COMPANY,
Respondent.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR EXPRESS PUBLISHING COMPANY.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals R. I. 85-85, is reported in 111 F. (2d) 588; that of the National Labor Relations Board, R. I. 52-73, is reported in 13 N. L. R. B. 1213.

STATEMENT.

The respondent does not agree with that portion of petitioner's statement describing the bargaining proceedings, the nature of the complaint and the opinion of the court below. In response thereto the respondent submits the following:

The facts in reference to the bargaining were undisputed. The negotiations were reported by a court reporter. His transcript and copies of the correspondence were stipulated. As shown by the stipulation, in the early part of March, 1938, the Guild asked for a meeting to bargain, R. III. 11-12. The Respondent promptly recognized the Guild and fixed a date for meeting, R. III. 13, accepted by the Guild, R. III. 14. On March 14 the first meeting was held and the Guild submitted a proposed contract. The bargaining was well launched at this meeting. The contract submitted by the Guild, R. III. 141, proposed a considerable raise in wage scales, relinquishment by the employer of a large part of its power to employ and discharge in its editorial and news department, large expenditures for health and accident payments, large severance wage payments, etc. The employer, on the other hand, R. III. 17-18, contended that Respondent had maintained just and impartial relationships toward the employees; that conditions of employment, including vacations with pay, sick leave, retirement pensions and existing wage scale, were fair. The Respondent agreed to take the

Guild's contract and consider it and meet again. On the 25th of March Respondent itself requested the Guild to meet for further bargaining, and on the 30th the meeting was had, and the Respondent gave a written detailed statement of Respondent's objections to the proposed contract, not merely stating that it was unreasonable as contended by Petitioner, but giving in detail, paragraph by paragraph, the grounds of Respondent's objections. There succeeded lengthy discussions, R. III. 25, et seq., at that and several additional meetings. In the course of the discussions the Guild representatives admitted again and again that the proposed contract submitted by them was unreasonable and unwarranted.

> Mr. Dielman (one of the Guild's negotiators)—"and I think Mr. Ragsdale (the Guild president, another one of the Guild's negotiators) personally made the statement that we know at the present time that such a scale would be out of the question." R. III. 46.

At the next meeting the Guild presented the same contract. Further discussion was had of it and at the next meeting the same contract was again submitted by the Guild and again the Guild's representatives admitted in the words of Mr. Ragsdale, its president,

> "The Guild, in this last meeting we had in Mr. Huntress' absence, specifically stated that it wanted it understood that the contract pro-

> posed was a basis for negotiations; that we had no idea that we were going to get the wages set out there, although we thought those wages were right; but conditions were not right to get them." R. III. 118.

And again Mr. Dielman, another of the Guild's negotiators, said,

> "I believe the members of the Guild realize that even though they consider the contract submitted is a fair contract, Mr. Huntress, that it would probably not be justified under present conditions obtaining in San Antonio. Isn't that about right? In other words, it is a fair contract for a basis of discussion. It may not be warranted in all of its provisions at the present time." R. III. 119-120.

After a number of meetings and lengthy discussions, the report of which contained approximately 150 pages, the negotiations were terminated by the Guild, the Respondent advising the Guild that it would be ready to continue them at any time the Guild desired, R. III. 123. Throughout the proceedings the Guild recognized the good faith of the Respondent in the negotiations. The president of the Guild, one of the negotiators, R. III. 93, said:

> "Mr. Ragsdale: If the Express Publishing Company can read into this statement of sincerity any intent of the Guild to now or previously question the sincerity of the publisher, I say if you can, then I deny that it is there.

> * * * I say I deny that there is any intent to question the sincerity of the publisher. In my mind there will never arise a question as to his sincerity. I believe that he is sincere and I have stated so previously in these conferences."

And again, R. III. 100:

> "Now I don't think as far as any threats as to the National Labor Relations Board is concerned, if we are willing to go that far, (referring to his disclaimer of intentions to go before the Board) I think it ought to show our sincerity, that we believe the publisher is sincere, and all we want to do is to sit here and talk the thing over and get our side of it as well as the publisher's side into the record."

Those statements were made near the close of the bargaining.

The complaint in this proceeding filed by the Petitioner did not charge bad faith. On the contrary, it limited its charge of failure to bargain to the bare charge that the Respondent did not accept the Guild's proposal and did not submit a counter proposal. The charge in reference to the bargaining count first states that the Guild requested Respondent to bargain; that the parties met and that

> "Respondent did refuse, has refused and does now refuse to bargain collectively with said San Antonio Newspaper Guild as the exclusive representative of all the employees in

said Union **in that** though Respondent met with the representatives above named and expresses itself as willing to meet again, the Respondent has **consistently refused to agree to any request made by the Union and has refused to offer any character of counter-proposal to said Union.**" (Emphasis ours).

Complairt, R. I. 13.

PROPOSITIONS.

1. There was no evidence that Respondent failed or refused to bargain collectively in good faith.

2. The complaint having limited the charge of failure to bargain to a failure to agree to the Guild's proposal and an alleged failure to submit a counter proposal and having made no charge of failure to bargain in good faith, the Respondent cannot be found guilty of failure to bargain in good faith.

3. The Board has no power to require Respondent to sign a confession that it has been guilty of unlawful practices because such requirement would infringe upon the freedom of speech guaranteed by the First Amendment to the Constitution, since liberty of speech includes freedom to be silent, and would violate the provisions of the Fifth and Fourteenth Amendments of the Constitution guaranteeing due process of law, and would exceed the power vested in the Board which did not include the power to punish by requiring the posting of confessions by parties denying the truth thereof.

ARGUMENT.

1. **Good faith bargaining.** One of the unusual features of this case, is that although the Guild representatives were promptly recognized and negotiations conducted at great length, just because an agreement was not arrived at, the Board finds that the employer did not bargain in good faith. It is noteworthy that the complaint did not charge lack of good faith. In fact, at the time it was filed the Board was contending that bargaining, as a matter of law, required the employer to make an offer. But, when after the hearing in this case there were decisions of the Circuit Courts refusing to follow that theory, the Board changed its position without any amendment of the complaint or further hearing to the claim of bad faith. The record shows that Respondent in good faith endeavored to persuade the Guild to come around to its point of view, to realize that the contract the Guild was seeking, as the negotiators finally admitted, was unreasonable and out of the question, and also to realize that the present employment conditions were fair. The Guild used one sort of trading method, the Respondent another. The Guild was somewhat aggressive, as it, of course, had a right to be. As its opening gun fired at the first meeting, Mr. Ragsdale, the president of the Guild, stated that

> "Most of the people who are members of the Guild"

have no idea

> "—as the saying is, to put the 'bee' on the Express." R. III. 19-20.

And again, from time to time, he uses language showing his consciousness of the employees' power, referring to their not desiring to embarrass or injure the Respondent, and again, not intending

> "to pin the publisher down to something he does not feel he must honestly go into." R. III. 94.

And again,

> "As to our attitude towards the publisher of the Express Publishing Company, we have always maintained the highest respect for his ability and for his integrity and we trust that nothing will transpire to cause us to regard him otherwise." R. III. 66.

And again, in referring to the custom of the Respondent to grant pay during sickness, etc.,

> "They have been extended without expense to the Express Publishing Company. The only burden involved was that which fell upon the employees themselves, who did the work of their absent colleagues so that they would have access to the same consideration." R. III. 67.

The Respondent being in the position of employer anxious to maintain satisfactory relationship with its employees, patiently sought to convince them

without antagonizing them. Although the contract proposed by the Guild contained such obviously unreasonable provisions as "full pay for the entire duration of illness", Article IX, 1 of the proposed contract, R. III. 147, under some circumstances and for long periods under others; provisions requiring that the office boys should be given first opportunity to fill vacancies in the editorial department, etc., the Respondent refrained from any undue criticism of the Guild's proposals and patiently sought to convince them that the present wage scales and other terms were as good as could be expected under present conditions. In reference to the matter of good faith the negotiators throughout the proceedings expressly disclaimed any intent to question the good faith or sincerity of the Respondent, and conceded its good faith and sincerity (see quotations in the statements from R. III. 93, R. III. 100); and in the complaint filed Respondent's good faith was not questioned.

The complaint limited the charge of failure to bargain to refusal to accept the Guild's proposal or make a counter proposal. It is correct that the Respondent did refuse to agree to the one and only proposal submitted by the Guild which the Guild admitted to be unreasonable and unwarranted under present conditions. In reference to the submission of a counter proposal, it submitted one only in the sense that it continuously stated that it believed the present wage scale and terms of employment to be

satisfactory. We regard the Respondent's statements that the present terms should be considered satisfactory as a counter proposal. It cannot be said that no counter proposal was submitted, unless it be contended that to be a counter proposal there must be an offer of a raise in wages or a change in terms of employment. The Wagner Act does not mean that every time a raise in wages is asked the employer must submit a counter proposal of at least some raise. It is clear that he is within his rights if he submits a counter proposal of continuing the same scale or lowering it. The fact that the parties did not agree does not constitute failure to bargain. Mention is made by the Board of arguments employed by the Respondent. In most instances the record is not stated sufficiently to give a correct reflection of what occurred. For instance, Petitioner contends that Respondent was in bad faith because by a contract with the Typographical Union, R. IV., the Respondent for many years had given to that Union a large portion of its power to employ and discharge, etc., and yet was refusing it to the editorial department. There is nothing to indicate bad faith in that. It is easy to see why the publisher of a newspaper may willingly share or entirely delegate to another the power to choose and discharge mechanical workers, but would want to retain the power to choose those charged with speaking his thought in editorials and following his policies in reporting the news. No one but the publisher can

judge when (as President Wilson stated in calling for Lansing's resignation) "another's mind goes along with mine." Mechanical skill to operate machinery is susceptible to standardization and skilled mechanics agree upon qualifications of workers. But there is no standardization possible or advisable in editorial and news policies. Newspapers differ among themselves and it is in the multitude of differences of opinion emanating from the freedom of each publisher to voice his own policies that journalism in democratic countries differs from journalism in autocratic and totalitarian states. Regardless of whether the Guild or the Board agrees with the publisher in the importance of maintaining his freedom to choose his editorial employees, we do not think it can be said that it evidences bad faith or failure to bargain for him to insist upon retaining that freedom in the editorial department just because he has surrendered part of it in a mechanical department.

The Petitioner views the opinion of the Circuit Court of Appeals as affirming the Board's findings of fact. We do not think it does so. The opinion is brief, but it is evident that the reason it set aside the Board's order was because it did not agree with the Board's findings, and was sustaining Respondent's assignments that there was no evidence to support the findings. It is true that there are some ambiguous statements in the court's opinion; for instance, it states that Respondent had determined

in advance never to agree to anything, using language which taken alone might indicate that the court thought this as a matter of law was a failure to bargain, but in the very next sentence it shows that this was not its literal meaning by stating:

> "Of course Respondent was not bound to make any agreement and technically it was not bound to make a counter proposal, but it was required to meet its employees with an open mind, **and if it was unwilling to do more than maintain its present status, to say so and to express a willingness to have that as the agreement between them.**" (Emphasis ours).

The Petitioner has been contending that the Respondent did from the first insist on maintaining its present status. As a matter of fact, the record shows that although the Respondent argued from the beginning that the present terms of employment should be considered satisfactory, it did not close the door by any means to negotiation and bargaining over whether the Guild's proposals should be accepted, and each party gave the other full opportunity to persuade it to change its position.

The burden of the Petitioner's argument is that unless Respondent is willing to yield something, no bargaining is had. We do not conceive that to be a reasonable interpretation of the Act. The Act does not require agreement. Neither party can be forced to make an agreement. To require a proposal would

be tantamount to requiring an agreement, for every proposal, if accepted, becomes a contract. Nor does the Act require parties not to have opinions. Opinions are beyond the control even of the person himself. If an employer, when meeting for bargaining purposes, already has a fixed opinion that he cannot afford to pay higher wages, it may well be that it is beyond his own power to change that belief. There is nothing in the Wagner Act that forbids either of the parties from entering into the bargaining with an opinion already arrived at. Preconceived opinions do not indicate bad faith. It might as well be argued, when a judge at the outset of a hearing already has an opinion of what the law is, that he is therefore conducting the hearing in bad faith, regardless of how patiently he considers counsel's argument. The Act contemplates that each of the parties shall be free to negotiate; each may take his respective position and maintain it with ever so much steadfastness, providing the employer in good faith enters into the bargaining and gives the employees full opportunity to induce him to change his mind. Each of the parties owed a duty to enter into the negotiations to see if either could be induced to yield, but the Wagner Act does not require either to yield. Any other interpretation of the Act would be abhorrent to the very term "bargain."

The issue between the parties was clear-cut. The Guild had definitely made up its mind that it wanted a large degree of influence in the matter of deter-

mining the personnel of the editorial department; that it wanted fixed pay for fixed lengths of time with substantial severance pay upon discharge, regardless of cause therefor; sick leave pay for long periods, etc.; that it might partially relinquish its demands on the wage scale, but not on the other terms. The employer, on the other hand, desired in his editorial department the right to employ whom he saw fit, without discrimination between union and non-union employees, with untrammeled right to terminate the employment according to his own belief of incompetency, giving the employee a corresponding right to terminate the employment. It is apparent that the employees honestly believed that their security would be assured by the contract; that the publisher honestly believed that it would be unwise for him to relinquish the power to choose and discharge the employees of the editorial and news departments as he had done in the mechanical departments. The employees stood on their proposal as they were entitled to do so, no matter how unreasonable it might be. The Respondent stood on its present wage scales and its present freedom of employment and discharge. The Respondent did not shut its ears to the Guild's proposals. It listened to them, discussed them, argued about them. But it was **not convinced.** The Wagner Act does not require it to agree to the proposals when it is not convinced.

2. **Complaint did not charge bad faith.** The complaint, as above stated, limited the charge to a failure to agree to the Guild's proposition and the alleged failure to submit a counter proposal, R. I. 13, and made no charge of failure to bargain in good faith. The Board, however, proceeded to make a finding that the Respondent's bargaining was not conducted in good faith on Respondent's part. While a liberal procedure is authorized, the Board must afford to the parties the essential elements of a fair trial. Among those essential elements is the right to be informed of the nature of the accusation. That right has been deemed so important that in criminal cases in the Bill of Rights in the Federal Constitution it is guaranteed in ARTICLE VI. We believe the rules of almost any civilized country, in civil proceedings as well, require that the parties be advised, and that they be not tried on one charge and convicted on another. If the Board had desired to charge bad faith it would have been only ordinary fairness to do so in the complaint and allow the Respondent to offer evidence on the subject. Instead, Respondent was beguiled by the constant and candid protestations on the part of the Guild, quoted above, that they did not question the good faith of the Respondent. If the complaint had made such a charge the Respondent would have had an opportunity to offer specific testimony and join issue thereon; but the trial was conducted on the complaint charging failure to bargain based solely on the legal theory

that a failure to accept the Guild's proposition and the alleged failure to make counter proposals constituted a failure to bargain. The Wagner Act recognizes the fundamental right of the Respondent to be informed of the nature of the accusation. It provides:

> "The Board * * * shall have the power to issue and cause to be served upon such person a complaint stating the **charges in that respect."**

The Board has simply found the Respondent guilty of something that was not charged in the complaint in finding it guilty of a lack of good faith.

The importance of the principle involved is illustrated by what happened in the other count in the complaint. The other count was that Hall, Respondent's agent, read a statement **"intending to"** discourage membership in the Guild. Thus, on that count the Petitioner raised the issue of the mental process involved in reading the statement. Respondent undertook to meet that issue with testimony and offered Hall's oral testimony in reference to his intention. The Petitioner objected to the testimony and the examiner overruled the objection upon the ground that his intention had been made an issue by the complaint. The Petitioner thereupon amended the complaint so as to strike out the reference to intention and aver that the statement had the effect of discouraging membership. Hall's testimony as to his intention was thereupon omitted and Re-

spondent offered testimony instead that no one was discouraged from membership in the Guild. Before the Board and the Circuit Court of Appeals the Petitioner again tried to raise the question of intention, the undisputed evidence having shown that no one was in fact discouraged from membership. The Circuit Court of Appeals held that the amendment precluded inquiry into intention and since there was no evidence of membership having been discouraged, found for Respondent on that count. As stated by Petitioner in its brief, that count is not before this court, since Petitioner does not complain of the Circuit Court of Appeals' ruling thereon, but we point to it to illustrate the fact that exactly the same situation is occurring in reference to the bargaining count. The Petitioner in the complaint in the bargaining count from the very beginning expressly limited the complaint of failure to bargain to a failure to agree to the Union's proposal and refusal to offer a counter proposal. It would not constitute a fair trial to permit it now to change the issue to one of good faith.

3. **Board's order requiring Respondent to post a confession of guilt.** The Board's order after ordering the Respondent to cease and desist from refusing to bargain collectively with the Guild and from interfering with, restraining or coercing its employees in the exercise of their rights of self organization, forming, joining and assisting labor organization, bargaining collectively and engaging in

concerted activities for collective bargaining or other mutual aid and protection as guaranteed by the Act, proceeded to order the Respondent further to post notices in conspicuous places

> "Stating (1) that Respondent will cease and desist as aforesaid, and (2) that Respondent will bargain collectively"

with the Guild, etc.

A statement by Respondent that it will cease and desist from doing the things above mentioned cannot have any other meaning to one familiar with the English language than that the Respondent confesses that it has been guilty of such practices. The matter of requiring or extorting confessions has had a long and somewhat unhappy history in jurisprudence. Confessions were obtained by torture in the most civilized countries through long ages. But at an early date in English speaking countries the practice was discarded, and finally the European continental countries abandoned it also, though with much reluctance, for some contended that when enforced confessions were abolished.

> "Justice lost her chief handmaiden."

The forced confession was retained until a late date in countries living under the civil law. It was used not only to obtain evidence but as a means of punishment. For example, in France it was often required just before execution. The **Amende Honor-**

able was defined by Cotgrove as: "a most ignominious punishment inflicted upon an extreme offender who must go * * * in some public place and there confess his offense to the aggrieved party." This device served two great purposes: first, it administered bitter punishment to the spirit of those indomitable souls who could not be crushed by physical pain; second, it solaced the consciences of the government tribunals and quieted the doubts of a skeptical public as to the real guilt of the convicted man. The **Amende Honorable** was abrogated in France in 1791 after the fall of the Bastile along with other punishments deemed dishonorable to individual liberty. It was re-established during the Bourbon restoration but only in cases of sacrilege and finally abolished in 1830 upon the second overthrow of the Bourbons.

But English speaking countries governed by the common law developing the theory of the personal liberty of the individual always abhorred the forced confession. Although sometimes employed by executive authorities and extraordinary tribunals such as the Star Chamber Courts, it was the glory and pride of the Common Law Courts that they never recognized its legality. Efforts to introduce the civil law system into England were resisted most effectively by the argument that the forced confession with its incidents of torture of the body and humiliation of the spirit of free men would necessarily follow.

Greater and greater safeguards were thrown around the citizen to prevent the law enforcement officers from abusing the citizen's right to be freed from such tyranny. These provisions took various forms in the civil and criminal jurisprudence. In criminal matters they protected the citizen by providing that he shall not be compelled to give evidence against himself. Safeguards were thrown by law around the citizen to be sure that any confession was a voluntary one, providing during arrest for explanation by a magistrate that the confession is not required of him and that it may be used against and not for him. In civil matters various corresponding safeguards were adopted, varying to meet the exigencies of different situations. Freedom of speech was guaranteed, which the courts have uniformly held to include the freedom to be silent. It was provided that no person should be deprived of liberty without due process of law, "no cruel and unusual punishments inflicted." The practice of extorting confessions had been so thoroughly anathematized by law, and the citizen's safeguards against it had been built up around him by the courts into such a bulwark, that the practice on the part of governments of extorting confessions had appeared throughout the world to be nothing more than a forgotten page in history. But recently the western world has been amazed at the sudden plunge backward of many of the European governments into the tyrannies of the past, and have read with as-

tonishment the accounts of the wholesale confessions to most extraordinary and unbelievable crimes, publicly made as the result of what every intelligent American citizen knows to be orders from some government tribunal. There is nothing in the Wagner Act that gave the Board the power to adopt this alien penalty and import it to American soil. This is not an unimportant matter of procedure. That portion of the Board's order is not an inadvertent substitution for an order to cease and desist. The principle involved was ably announced in **N. L. R. B. vs. Abell Co.**, 97 Fed (2d) 951, followed in **Burlington etc. Co. vs. N. L. R. B.**, 104 Fed. (2d) 736 and in **Swift & Co. vs. N. L. R. B.**, 106 Fed. (2d) 87.

As shown by the cases cited by Petitioner, some of the circuit courts of appeals agree and some disagree with the Abell case, and they are in disagreement as to whether this court decided the question in the Falk case.

In the Abell Co. case the Circuit Court of Appeals pointed out a simple way to enforce the provisions of the Act without the unjust requirement of a "confession" from one who is disputing the truth of what he is required to "confess." That the question is not a mere matter of accidental phraseology is demonstrated by the fact that although in the Abell case the Court pointed out a fair manner in which to frame the order to avoid the "confession" of guilt, the Board persists in following the form involving such "confession." It is no answer to say

that an unwilling confession should not be held against a party. It is the unwilling confession that is condemned by law. The Board is tenaciously maintaining its position that it has such authority. The purpose is obvious. Congress gave the Board wide powers in determining facts and enforcing the collective bargaining process; but it gave it no power whatever to punish. It wisely reserved that power to the courts, so that punishment should not be meted out by a non-judicial body. But there could be no more bitter form of punishment devised than to force a confession of guilt. It is one which the courts relinquished long ago. In a court of justice, even when a defendant wants to confess, the court carefully inquires into the circumstances of the plea of guilt in order to be sure that it is not only justified by the facts, but is voluntary. It is common knowledge that in the days of western lawlessness an individual could inflict no more galling punishment upon his enemy than to force him to sign "a lie bill." Every court in our country is passing almost daily upon applications for injunction and issuing them where it finds justification therefor. But what court of justice in the country would entertain for a moment a request on the part of a plaintiff that the fiat prayed for not only restrain the defendant but also order him to post a notice admitting his guilt? Certainly when Congress refrained from giving the Board any power to enforce its orders or inflict punishment, it did not intend to confer upon it the

power to inflict a punishment which has been denied even to the courts. The courts in spite of the broad and general powers conferred upon them have never assumed any such power, but on the contrary have zealously guarded all persons against the exercise of such power by executive officers or other governmental officials.

CONCLUSION.

We believe it to be evident that the Circuit Court of Appeals, after reviewing the record, concluded that there was no evidence to support the Board's findings of fact in reference to the failure to bargain. If it had intended by its opinion to approve the Board's finding, it would doubtless have approved the order, for the court has uniformly followed that procedure. Of course, it sustained that part of the Board's order directing the Respondent to continue the bargaining upon the Guild's request, for under the Act that is a continuing duty on the part of the Respondent. Its refusal to enforce the remainder of the order can mean only that it found no evidence to support the Board's finding. Its criticisms of both parties' method of negotiation are in effect admonitions to them as to how the negotiations should be continued.

We submit that the evidence shows that the Respondent's policy of retaining a free hand in employment and discharge, demoting and advancing

in the editorial and news departments was arrived at in good faith and has been continued without variation since the founding of its newspaper and constitutes a part of the policy it believes wise in order to maintain its position as an independent newspaper. The maintenance of that independence is not an easy matter. It must withstand the influence of political interests, financial interests, other powerful publishers, and many other interests seeking to influence its editorial expression and the interpretation of the news. The Wagner Act imposes a duty upon Respondent to bargain collectively with its employees as to whether it is willing to relinquish or restrict those rights; but it does not impose any obligation upon Respondent to be persuaded in such bargaining to contract away any freedom to conduct its editorial and news departments according to its own beliefs as to the manner in which they would best serve its function as a free press, subject, of course, to its obligation not to interfere with the right of its employees to organize and bargain collectively. The fallacy in the Board's order is that it is based upon the theory that the Act imposed upon the Respondent not merely the obligation to bargain with the Guild as to whether it is willing to barter away such freedom, but also the obligation, even though not convinced by the Guild, to nevertheless enter into a contract limiting its rights in these respects.

We believe the evidence shows that it is Respondent's sincere belief that in its own newspaper it is not wise to enter into an agreement fixing arbitrary standards of advancement of employees in its editorial and news department according to longevity of service or any other artificial standard, or for their employment or retention other than according to the publisher's belief in their professional ability and their ability to aid best in enunciating editorial principles represented by Respondent's newspapers.

Respectfully submitted,

Leroy G. Denman

Attorney for Respondent.

BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 11 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

EXPRESS PUBLISHING COMPANY, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE SINGER MANUFACTURING COMPANY, *AMICUS CURIAE*.

ARTHUR E. PETTIT,
149 Broadway,
New York, N. Y.,

ROLAND OBENCHAIN,
801 Odd Fellows Building,
South Bend, Indiana,

Attorneys for The Singer Manufacturing Company, amicus curiae.

BLANK PAGE

INDEX

	PAGE
Issue argued	1
Argument	2
Conclusion	12
Appendix, containing pertinent provisions of the statute involved	14

CITATIONS.

Cases.

Art Metals Const. Co. v. National Labor Relations Board, 110 F. (2d) 148 (C. C. A. 2)	9
Hartsell Mills Co. v. National Labor Relations Board, 111 F. (2d) 291 (C. C. A. 4)	10
Matter of Stackpole Carbon Company and United Electrical and Radio Workers of America, Local No. 502, 6 N. L. R. B. 171	7
National Labor Relations Board v. Biles Coleman L. Co., 98 F. (2d) 18 (C. C. A. 9)	10
National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U. S. 240	4, 7, 10
National Labor Relations Board v. Griswold Mfg. Co., 106 F. (2d) 713 (C. C. A. 3)	10
National Labor Relations Board v. Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4)	9
National Labor Relations Board v. Pennsylvania Greyhounds Lines, Inc., 303 U. S. 261	3
National Labor Relations Board v. Swift & Co., 108 F. (2d) 988 (C. C. A. 7)	8
National Labor Relations Board v. Swift & Co., 116 F. (2d) 143 (Adv. Op.) (C. C. A. 8)	4, 9
New York, New Haven & Hartford R. Co. v. Interstate Com. Com., 200 U. S. 361	4

PAGE

Standard Oil Co. of New Jersey v. United States, 221 U. S. 1 ..... 3, 8
Swift & Co. v. United States, 196 U. S. 375 5
Texas & New Orleans R. Co. v. Brotherhood of Rwy. Clerks, 281 U. S. 548 ..... 3, 4, 11
Virginian Rwy. Co. v. System Federation No. 40, 300 U. S. 515 ..... 4, 11

Statutes.

National Labor Relations Act, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151, *et seq.*
Section 7 ..... 2, 8
Section 8(1) 2, 8
Section 8(5) 2, 6, 8
28 U. S. C. A. Section 383 13

IN THE

Supreme Court of the United States

October Term, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

EXPRESS PUBLISHING COMPANY, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE SINGER MANUFACTURING COMPANY, *AMICUS CURIAE*.

This brief is submitted on behalf of The Singer Manufacturing Company, a New Jersey corporation, *amicus curiae*, consent thereto having been obtained from both the Board and the respondent. It is submitted in relation only to the following issue, an issue not argued in respondent's brief: Respondent having been ordered to bargain collectively with the Guild, did the Court err in striking out subdivision (b) of paragraph 1 of the Board's order which ordered and directed respondent to cease and desist from:

> "(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective

bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act." *

The Board states the issue with respect thereto, page 2 of its brief, as if the only question were whether a refusal to bargain collectively in violation of Section 8(5) of the Act constitutes a violation of Section 8(1) of the Act. We respectfully submit that from an affirmative answer to that question it does not follow, as the Board assumes, that a sweeping injunction to obey the law is necessary or proper.

The Board, in support of its sweeping injunction, argues every point except as to whether in the particular circumstances shown such a sweeping order is necessary or proper. The Board, for instance, argues (1) that a violation of Section 8(5) constitutes a violation of Section 8(1); (2) that the order that respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act "is appropriate in form"; (3) that it has been determined in certain cases that the Board "may validly" impose a prohibition "substantially in the language of the statute," and (4) that this Court in another case involving entirely dissimilar circumstances sustained an order in such form. If, however, each one of these propositions be accepted as correct it does not follow that

---

* The interest of The Singer Manufacturing Company in this question arises from the fact that a provision identical in form is incorporated in an order issued by the Board directing said Company to bargain collectively with the union designated therein and that such order is now before the United States Circuit Court of Appeals for the Seventh Circuit (No. 7509) upon petition by the Company asking that the same be set aside and upon the counter petition of the Board asking that it be enforced. Among other issues raised therein is the propriety of a provision in the form above set forth. If such order is sustained in the instant case it will constitute an embarrassing precedent.

it was error in the instant case to strike out the above provision.

We accept the proposition that an order in all instances need not be limited to the particular facts and circumstances disclosed by the record. We further accept the proposition that in certain instances a prohibition may be imposed "substantially in the language" of some portion of a statute.* We think, however, that such propositions must be read in the light of the rule that an order should not be broader than is reasonably necessary, under the circumstances disclosed, to prohibit in the future the unlawful acts shown or *other acts similar thereto* which would defeat the purposes of the Act and the order.

In *Standard Oil Co.* v. *United States*, 221 U. S. 1, this Court stated at page 77:

> "It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. Swift & Co. v. United States, 196 U. S. 375. But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of *broader and more controlling remedies.*" (Italics ours.)

The above quoted proposition that *under certain circumstances* "broader and more controlling remedies" may

---

* For example, an employer may be ordered to cease and desist from "dominating or interfering with the formation or administration" of a union (*N. L. R. B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261), or from "interfering with, influencing, intimidating, or coercing" employees with respect to their right of selecting or designating their representatives (*Texas & New Orleans R. Co.* v. *Brotherhood of Rwy. Clerks*, 281 U. S. 548).

be applied has been taken by the Board as a license to impose upon every employer a sweeping injunction to obey the law, regardless of what the circumstances may be in the particular case. The Board reaches this distorted conclusion (1) by ignoring the express statement in the *Standard Oil* case that "ordinarily" adequate measure of relief will result from restraining the doing of acts found to have been in violation of the statute; and (2) by failing to realize that "broader and more controlling remedies," where required by the circumstances, do not include a sweeping injunction to obey the law. The Board relies primarily upon *National Labor Relations Board* v *Swift & Co.*, 116 F. (2d) 143 (Adv. Op.) (C. C. A. 8); *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, 262; *Texas & New Orleans R. Co.* v. *Brotherhood of Rwy. Clerks*, 281 U. S. 548, 552, 567, 568, 571, and *Virginian Rwy. Co.* v. *System Federation No. 40*, 300 U. S. 515, 543-544.

Before considering these cases we wish to point out the very strong disapproval of this Court of orders constituting a sweeping injunction to obey the law. In *New York, New Haven & Hartford R. Co.* v. *Interstate Com. Com.*, 200 U. S. 361, Mr. Justice WHITE said at page 404:

> "The contention, therefore, is that, whenever a carrier has been adjudged to have violated the act to regulate commerce in any particular, it is the duty of the court, not only to enjoin the carrier from further like violations of the act, but to command it in general terms not to violate the act in the future in any particular. *In other words, the proposition is that, by the effect of a judgment against a carrier concern- a specific violation of the act, the carrier ceases to be under the protection of the law of the land, and must thereafter conduct all its business under the jeopardy of punishment for contempt for violating a general injunction. To state the proposition is, we think, to answer it. Swift & Co.* v. *United States*, 196 U. S.

375, 49 L. ed. 518, 25 Sup. Ct. Rep. 276. The contention that the cited case is inapposite because it did not concern the act to regulate commerce, but involved a violation of the antitrust act, we think is also answered by the mere statement of the proposition. *The requirement of the act to regulate commerce, that a court shall enforce an observance of the statute against a carrier who has been adjudged to have violated its provisions, in no way gives countenance to the assumption that Congress intended that a court should issue an injunction of such a general character as would be violative of the most elementary principles of justice.* The injunction which was granted in the case of *Re Debs*, 158 U. S. 564, 39 L. ed. 1092, 15 Sup. Ct. Rep. 900, was not open to such an objection, as its terms were no broader than the conspiracy which it was the purpose of the proceeding to restrain. *To accede to the doctrine relied upon would compel us, under the guise of protecting freedom of commerce, to announce a rule which would be destructive of the fundamental liberties of the citizen.*" (Italics ours.)

In *Swift & Co.* v. *United States*, 196 U. S. 375, Mr. Justice HOLMES, referring to a bill to restrain violations of Federal law against unlawful restraints and monopolies and an injunction entered thereon, said:

"The general objection is urged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. The scheme alleged is so vast that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are, and from their

nature must be, so extensive in time and space, that something of the same impossibility applies to them. The law has been upheld, and therefore we are bound to enforce it notwithstanding these difficulties. *On the other hand, we equally are bound, by the first principles of justice, not to sanction a decree so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law.* We must steer between these opposite difficulties as best we can" (pp. 395-396). (Italics ours.)

* * * * * * * * * *

"* * * The general words of the injunction 'or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid,' should be stricken out. The defendants ought to be informed, as accurately as the case permits, what they are forbidden to do. Specific devices are mentioned in the bill, and they stand prohibited. *The words quoted are a sweeping injunction to obey the law, and are open to the objection which we stated at the beginning, that it was our duty to avoid"* (p. 401). (Italics ours.)

We do not believe that the fundamental principles of justice have changed in such short time as to warrant a sweeping injunction against a publisher of newspapers ordering it "to obey the law" on the sole basis that such publisher violated one specific subdivision of the National Labor Relations Act in one specific manner.

Respondent has been charged with one of the following alleged violations of Section 8(5) of the Act requiring it to bargain collectively:

(1) Failure to make counter proposals, or

(2) Failure to state the terms of an agreement that would be acceptable to it, or

(3) A predetermination not to enter into any contract.

Let us suppose for the purpose of argument that respondent believed that under the law it was not obligated to be willing to enter into any contract whatever and that the third or the more extreme be accepted as the position found to have been taken by it. Should it be a normal consequence thereof that from the time it is determined that such belief is not justified under the provisions of the Act respondent through eternity upon complaints of a union shall have heard and tried in contempt proceedings the propriety of every discharge of an employee, every change in an employee's salary or working conditions, every editorial it writes which may be construed as a reflection upon the union,* in fact every step that it may take in conjunction with the conduct of its business which directly or indirectly affects its employees? Is every mistake in judgment and every mistake in fact, however sincere, to be relieved from a jail sentence only at the mercy of the Court? Fundamental principles of justice have not been so changed that a single breach of a single provision of the Act permits one to be completely deprived of his normal right to have the propriety of his conduct determined in accord with the provisions of the Act and to have substituted therefor a continuing subjugation to contempt proceedings, fines and jail sentences for violations of an order "to obey the law." This Court, in *National Labor Relations Board* v. *Fansteel Metallurgical Corporation,* 306 U. S. 240, said at page 253

> "But reprehensible as was that conduct of the respondent, there is no ground for saying that it made respondent an outlaw or deprived it of its legal

---

* The Board in many instances has held that the issuance of written statements can constitute intimidation and coercion and has specifically applied such proposition to editorials in newspapers instigated by an employer. *Matter of Stackpole Carbon Co. and U. E. R. W. Local No. 502,* 6 N. L. R. B. 171, 182-184.

rights to the possession and protection of its property."

Similarly we say that a violation of a single provision of the Act does not render one an outlaw and deprive him of his normal legal right to operate his business as may other citizens free from a general injunction directing him to obey the law.

It is of interest to note that the Board's brief does not contain one line of argument showing the *necessity* for its sweeping injunction. It contents itself with a legalistic argument by which it shows that a violation of Section 8(5) is a violation of Section 8(1) and therefore a violation of Section 7. Conceding the argument, it does not establish the *necessity* or *propriety* of the sweeping injunction to obey the law. We submit that the cases relied upon by the Board give no support to any contention that any such sweeping order is necessary or proper.

So far as we know, the specific issue here raised has been raised only in the case of *National Labor Relations Board* v. *Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), in which case the ruling was adverse to the contention of the Board. In that case the Court held that a prohibition against violation of Section 7, worded the same as that in the instant case, was unwarranted and struck it out. The Court, citing *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77, 78, held that an order need not in all instances be limited to the particular facts and circumstances disclosed by the record and on the basis thereof sustained an order directing the employer to desist from dominating the union specified or "any other labor organization".

At the same time the Court struck out the provision prohibiting any violation of Section 7 of the Act, stating:

> "In our opinion the Board is not necessarily restricted in any case to an order which compels ces-

sation only of the particular and limited activity found to have taken place. As the remedy varies from case to case, so an order too broad in one case may be too narrow in another. In the last analysis of things, the propriety of an order depends on the facts of the case itself, and consideration is to be given to the complaint, the findings, and the character of the unlawful conduct—in short, consideration is to be given to all the facts and circumstances.

* * * * * * * *

"*Paragraph 1(b) of the order:* The Board was not warranted, however, in enjoining respondent from committing any act which might constitute a violation of Sec. 7 of the Act. In truth, the conduct enjoined has no fair relation to the issue which was heard and determined by the Board. The action of the Board in this respect was neither *necessary* nor *proper* under the facts and circumstances. The order is too broad." (p. 990.) (Italics ours.)*

---

* In *Art Metals Const. Co.* v. *National Labor Relations Board*, 110 F. (2d) 148 (C. C. A. 2), the Court sustained the Board's form on the basis of the usual legalistic argument made that violation of Section 8(5) constitutes violation of Section 8(1). Not only was the propriety of the order under the circumstances not considered, but on the contrary the Court expressly said: "The petition does not challenge the generality of the language used in Article 1(b) of the order ('In any other manner,' etc.,) and for that reason we do not consider whether it should have been limited to the single unfair practice found." (p. 151.)

In *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 639 (C. C. A. 4), and *National Labor Relations Board* v. *Swift & Co.*, 116 F. (2d) 143 (Adv. Op.) (C. C. A. 8), the form of the order was at issue and the Board's form was sustained. The issue, however, seems to have been determined, not on the basis of the *propriety* or *necessity* of a general injunction *under the circumstances shown*, but on the *assumption* that regardless of the propriety or necessity therefor under the circumstances shown the form is correct *as a matter of law*

(Footnote continued on page 10)

In *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, the respondent therein employed a labor spy; insisted that a bargaining committee should consist "only of employees of five years standing"; announced that it was its policy to refuse recognition "to outside unions"; refused to confer with a committee in which any "outside organizer had been included"; sought to have a "company union" set-up; required the president of the Union to work in a room adjoining the superintendent's office for the purpose of keeping him away from the other workers; refused to bargain with the Union (pp. 247-248).

In the course of its opinion this Court, under the heading, "*Sixth.—The requirement that respondent shall bargain collectively with Lodge 66 of the Amalgamated Association as the exclusive representative of the employees in the described unit*" (p. 261), held that under the circumstances disclosed respondent should not have been ordered to bargain collectively with Lodge 66. In the course of its discussion with reference thereto this Court said, at page 262, "The Board's order properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right *to self-organization and to bargain collectively* through representatives of their own choosing" (Italics ours). It thereupon stated that certain provisions of the Board's order therein, including sub-

---

(Footnote continued from page 9)
if a violation of Section 8(5) constitutes a violation of Section 8(1). The same may be said as to *National Labor Relations Board* v. *Biles Coleman L. Co.*, 98 F. (2d) 18, 22-23 (C. C. A. 9), except that it is not clear as to whether any issue was raised in regard to the form of the order.

In *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, 715-716 (C. C. A. 3), and *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. (2d) 291, 292 (C. C. A. 4), there apparently was no objection and no issue as to the form of the order.

division (a) of paragraph 1 thereof (identical in form with the provision considered in this brief) were sustained. We submit that the Court by so carefully delineating the acts which respondent was properly ordered to desist from committing completely negatives any thought that it was approving a clause constituting a sweeping injunction to obey the law. It is to be noted (1) that the nature of the activities of the respondent required a rather broad order to cease and desist from "interfering" with the right of the employees "to self-organization," and (2) the respondent therein did not raise the question as to whether the form of the prohibition was broader than warranted. The decision therefore certainly does not stand for the proposition that a general injunction to obey the law is proper in every case in which any single violation of the law may have been found.

In *Texas & New Orleans R. Co.* v. *Brotherhood of Ry. Clerks;* 281 U. S. 548, the injunction sustained was not a sweeping injunction to obey the law. The injunction restrained the Railway Company from interfering with, influencing, intimidating or coercing the Union or the Company's employees. It was directed at acts of intimidation that had been engaged in by the Railway. The very pages of this decision cited by the Board show such to be the fact and show that this Court analyzed the words "interference," "coercion" and "influence" and held that they were *definite and explicit enough to show the nature of the conduct prohibited by the injunction* (pp. 567-568).

So, too, in *Virginian Rwy. Co.* v. *System Federation No. 40,* 300 U. S. 515, the injunction was directed at specific acts. It restrained coercion and intimidation and directed the Railway Company to treat with the representatives of its employees. It was not a sweeping injunction to obey the law (pp. 540-541).

Under the circumstances shown by the record in this case, whether the ultimate order be limited to one directing respondent "to bargain collectively" or whether it be accompanied by a negative provision directing respondent "to cease and desist from refusing to bargain collectively," we submit that such order will constitute a sufficiently, if not an excessively,* "broad and controlling remedy" to secure the performance of the acts desired.

In connection therewith we believe it pertinent to point out that if a general injunction to obey the law be embodied in the order herein there indeed will be an anomalous result. The Board's allegation and finding that respondent intimidated and coerced its employees by the reading of a statement stand reversed and the complaint and order with respect thereto dismissed and vacated. Yet notwithstanding respondent's complete vindication with respect thereto, the proposed sweeping order will leave it in no better position than if the allegation, finding and order had been sustained.

In conclusion, we repeat that we recognize that in certain cases it is proper not only to restrain the precise acts committed but in addition thereto to restrain any other acts similar thereto, and that in certain cases in order to restrain such other similar acts it may be proper to word the prohibition in the language of the statute. We, however, sub-

---

* It is our contention that under certain circumstances an order "to bargain collectively," when applied to complex facts, situations, proposals and counter proposals arising from prolonged negotiations with respect to the substantive terms of a contract, such as were involved in *National Labor Relations Board* v. *The Singer Manufacturing Company*, 24 N. L. R. B. No. 41 (June 6, 1940), may be so vague and indefinite as to render such an order invalid. Such question, however, is not involved on the facts disclosed and if it were involved would not be open on the record herein.

mit that such principles cannot be used as an excuse to get into every order issued by the Board a blanket injunction directing the employer to obey the law. Such a blanket injunction contravenes not only the controlling decisions but contravenes the express provisions of a Federal statute. Section 383 of Title 28 U. S. C. A. provides:

> "Every order of injunction or restraining order * * * shall be specific in terms, and shall describe in reasonable detail * * * the act or acts sought to be restrained."

The Court did not err in striking from the order subdivision (b) of paragraph 1 thereof.

Respectfully submitted,

ARTHUR E. PETTIT,
149 Broadway,
New York, N. Y.,
ROLAND OBENCHAIN,
801 Odd Fellows Building,
South Bend, Indiana,
Attorneys for The Singer Manufacturing Company, amicus curiae.

APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * * * * *

SEC. 10. (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * * * * *

(e) * * * Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 442.—October Term, 1940.

National Labor Relations Board, Petitioner, *vs.* Express Publishing Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 3, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

The National Labor Relations Board ordered respondent affirmatively to bargain collectively with the San Antonio Newspaper Guild, the authorized representative of respondent's employees. In addition it ordered respondent, (1) to "cease and desist" from refusing to bargain collectively with the Guild; (2) to "cease and desist" from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization", and other rights guaranteed by § 7 of the National Labor Relations Act, 49 Stat. 449; 29 U. S. C. Supp. V, § 151, *et seq.;* (3) to post notices stating, among other things, that respondent will "cease and desist as aforesaid" and will bargain collectively with the organized representative of its employees. On the record before us the question for our decision is whether the provisions of the order which we have enumerated are supported by the Board's finding that the respondent had refused to bargain collectively with the authorized representative of its employees, and had interfered with such bargaining negotiation, and had thereby interfered with the exercise of the rights guaranteed by § 7 of the Act.

The Board issued its complaint charging respondent, a publisher of a newspaper, with refusal to bargain collectively with the Guild as the authorized representative of the employees in respondent's editorial department, and that by such refusal and by statements made by respondent at a meeting of those employees it "did interfere with, restrain and coerce" its employees in the exercise of the rights guaranteed by § 7 of the Act[1] and did engage in unfair labor

[1] The statements alleged to have been made by officers or agents of respondent were "Existing independent employment relations may be continued by the individual employees or by employees as a group". "No one can compel you to join any organization". And referring to respondent's treatment of its employees, it was alleged that respondent's officer stated: "Each of you know we were not forced to do this by any labor organization and no labor organization can force us to do these things".

practices defined by §§ 8(1) and 8(5). The usual proceedings and hearings before the Board resulted in findings by the Board to the effect that although respondent had throughout recognized the organization of respondent's editorial room employees and the Guild as their representative, and had met with the Guild representatives whenever requested for the purpose of discussing the employees' demands, it nevertheless had persistently refused to discuss in detail the proposals of the Guild, to make any counter proposals or to enter into any agreement with it, and had not negotiated in good faith in a genuine effort to compose the differences between employer and employees.

The Board found that respondent had refused to bargain as required by § 8(5) of the Act. It found that respondent had made the statements charged in the complaint at a meeting of its employees and that these statements were an "interference with the Guild's efforts to negotiate". Treating respondent's action in refusing to bargain and in interfering with the bargaining negotiations as an infringement of all the rights guaranteed to the employees by the Act, it found broadly, in the words of the statute, a violation of § 8(1) which declares that it is an unfair labor practice for the employer "to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in § 7". Section 7 provides: "Employees shall have the right of self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

From all this the Board concluded that the "appropriate remedy" was an order directing respondent "upon request to bargain collectively with the . . . Guild" as the "exclusive representative" of respondent's editorial room employees and "if understandings are reached to embody such understandings in a signed agreement if requested to do so by the Guild." Having provided the recommended remedy by the provisions of its order directing the respondent to bargain and to cease and desist from refusing to bargain the Board went further and ordered broadly that respondent should in effect refrain from violating the Act in any manner whatsoever. This it did by paragraph 1(b) of the order which directed respondent to cease and desist from

"In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to

form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act."

It is this and the provisions of the order other than that part of it directing respondent to bargain which are the subjects of the present controversy.

Upon petition of the Board to enforce the order, the Court of Appeals for the Fifth Circuit struck from it all the provisions except that which directed respondent to bargain with the Guild on request, and to embody any understanding in a signed agreement. For so much of the order as directed the posting of notices the court substituted a requirement that respondent notify the Guild of its willingness to comply with the order as modified and to notify a specified agent of the Board what steps respondent had taken to comply with the order. 111 F. (2d) 588. We granted certiorari November 12, 1940, the questions raised being of importance in the administration of the National Labor Relations Act.

Although respondent has not sought certiorari it seeks to retain such advantages as it may have gained from the modification of the Board's order below, by arguing broadly that the Board's finding of respondent's refusal to bargain is without support in the evidence, which it is said shows only that respondent refused to yield to the Guild demands as it was free to do. But in the absence of a cross-petition for certiorari by respondent that question is not open here. Without the findings relating to respondent's refusal to bargain there was no basis for any order by the Board and we think that the purpose and effect of the judgment sustaining so much of the Board's order as directed that respondent bargain with the Guild was to sustain the findings on which it was based. This appears both from the opinion of the Court of Appeals, the purport of which is that respondent in its negotiations with the Guild had not acted in good faith and so had failed to bargain as the statute requires, and also from the terms of the judgment modifying the Board's order. The judgment affirming the Board's order as modified retained, as the foundation of the judgment, the recital contained in the Board's original order that it was made upon the basis of all the Board's findings. In this state of the record our review is limited to the sufficiency of the Board's findings to support the order.

We conclude also that it is not open to respondent to challenge the judgment below, as it attempts to do, on the ground that the Board's complaint in charging a failure to bargain did not sufficiently inform respondent of the contention that it had failed to bargain in good faith. This is the case both because respondent has sought no review of the judgment below and because it sufficiently appears from the record that in the course of the hearings before the Board respondent was fully advised of the nature of the Board's contention.

But it is the Board which has brought the judgment below here for review and on it rests the burden of showing in what respects the judgment is erroneous. Cf. *Federal Trade Commission* v. *Beech-Nut Co.*, 257 U. S. 441. To sustain that burden the Board insists that all the provisions of its order were lawfully made and that it is entitled to have the order enforced in its entirety. Section 10(c) of the Act provides that if the Board "upon all the testimony taken" "shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice then the Board shall state its findings of fact and shall issue and cause to be served on such persons an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action . . . as will effectuate the policies of this Act." The Board, having found in this case that respondent had refused to bargain, that part of its order directing respondent to "cease and desist from refusing to bargain collectively" with the Guild, was in exact compliance with the statute and should have been left undisturbed by the judgment below.

A question of a different nature is presented by Paragraph 1(b) of the order by which the Board, on the basis of respondent's action in refusing to bargain and its statements interfering with the bargaining negotiations, has directed respondent not to violate "in any manner" the duties imposed on the employer by the statute. Petitioner argues that since respondent's refusal to bargain, which is a violation of § 8(5), is also a violation of § 8(1) which in terms incorporates by reference all the rights enumerated in § 7, the Board is not only free to restrain violations like those which respondent has committed, but any other unfair labor practices of any kind which likewise infringe any of the rights enumerated in § 7, however unrelated those practices may be to the acts

of respondent which alone emerged in course of the hearing and which the Board has found.

But we think it does not follow that, because the acts of respondent which the Board has found to be an unfair labor practice defined by § 8(5) is also a technical violation of § 8(1), the Board, in the circumstances of this case, is justified in making a blanket order restraining the employer from committing any act in violation of the statute, however unrelated it may be to those charged and found, or that courts are required for the indefinite future to give effect in contemp. proceedings to an order of such breadth.

We cannot find such authority or requirement in the carefully chosen language of § 10(c), which directs the Board to state its findings of fact showing the unfair labor practice charged and to order the person accused to "cease and desist from such unfair labor practice", or in § 10(e) of the Act which authorizes the court on application of the Board to enter a "decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board." It is obvious that the order of the Board, which when judicially confirmed, the courts may be called on to enforce by contempt proceedings, must, like the injunction order of a court, state with reasonable specificity the acts which the respondent is to do or refrain from doing. It would seem equally clear that the authority conferred on the Board to restrain the practice which it has found the employer to have committed is not an authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct.

Congress has itself afforded a guide pointing to the appropriate limits of the order which the Board is to make in restraining unfair labor practices. By its definition and classification of unfair labor practices in the statute it has shown that they are not always so similar or related that the commission of one necessarily merits or rightly admits of an order restraining all. Here the whole controversy between respondent and the Guild was with respect to the Guild's requests) bargain and respondent's attempt to influence the negotiations and its ultimate refusal to enter into an agreement from all of which the Board inferred the refusal to bargain in good faith. In all other respects respondent has consistently left the Guild and its activities undisturbed. The Board

made no finding and there is nothing in the record to suggest that the failure of the bargaining negotiations and all that attended them gave any indication that in the future respondent would engage in all or any of the numerous other unfair labor practices defined by the Act.

Refusal to bargain, defined as an unfair labor practice by § 8(5), may be, as we think it was here, wholly unrelated to the domination of a labor union or the interference with its formation or administration or financial or other support to it, all of which are defined as unfair labor practices by § 8(2). Refusal to bargain may be, as we think it was here, wholly unrelated to "discrimination in regard to the hire or tenure of employment of any term or condition of employment to encourage or discourage membership in any labor organization," all of which are unfair labor practices as defined by §8(3). Here the Board made no finding, based either on the specific circumstances disclosed by the record or on its own expert judgment of their relation to the policy embodied in § 7, or as to any relationship or probable relationship of respondent's refusal to bargain and the other types of unfair practices some of which are enumerated in § 8. Yet, if the contention which it makes is to be sustained subsequent violations of § 8(2) and (3), which are also violations of § 8(1) may be the subject of a contempt order merely because respondent by the refusal to bargain has violated § 8(5) which is similarly a violation of § 8(1).

In view of the authority given to the Board by § 10(c), carefully restricted to the restraint of such unfair labor practices as the Board has found the employer to have committed, and of the broad language of § 10(e) authorizing the courts to modify the order of the Board wholly or in part, we can hardly suppose that Congress intended that the Board should make or the court should enforce orders which could not appropriately be made in judicial proceedings. This is the more so because § 10(a), which authorizes the Board "as hereinafter provided to prevent any person from engaging in any unfair labor practice", specifically directs that "This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise". In the light of these provisions we think that Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not

found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found.

A federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past. But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged. This Court will strike from an injunction decree restraints upon the commission of unlawful acts which are thus dissociated from those which a defendant has committed. *Swift & Co.* v. *United States*, 196 U. S. 375; *New York, New Haven & Hartford R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 404, and see under the National Labor Relations Act, *National Labor Relations Board* v. *Swift & Co.*, 108 F. (2d) 988.

It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. But we think that without sacrifice of that principle, the National Labor Relations Act does not contemplate that an employer who has unlawfully refused to bargain with his employees shall for the indefinite future, conduct his labor relations at the peril of a summons for contempt on the Board's allegation, for example, that he has discriminated against a labor union in the discharge of an employee, or because his supervisory employees have advised other employees not to join a union. See e.g., *H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, decided January 6, 1941.

Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts. But as the Court has held in the case of the Federal Trade Commission, see *Federal Trade Commission* v. *Beech-Nut Co.*, *supra*, 455, an order not so related should be appropriately restricted on review. The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past. See *United States* v. *Trans-Missouri Freight*

Association, 166 U. S. 290, 308, 309; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77; *Texas & New Orleans R. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Local 167* v. *United States*, 291 U. S. 293; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 541, 543, 544. We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found. To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past. That justification is lacking here. To require it is no more onerous or embarrassing to the Board than to a court. And since we are in a field where subtleties of conduct may play no small part, it is appropriate to add that an order of the Board, like the injunction of a court, is not to be evaded by indirections or formal observances which in fact defy it. After an order to bargain collectively in good faith, for example, discriminatory discharge of union members may so affect the bargaining process as to establish a violation of the order.

The Board places strong reliance on *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, and on *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, *supra*, 555, 567, 568, 571, and *Virginian Railway Co.* v. *System Federation No. 40*, *supra*, 543, 544. In those cases the cease and desist order and the injunctions were substantially like paragraph 1(b) of the Board's order in the present case. But in them the unfair labor practices did not appear to be isolated acts in violation of the right of self-organization, like the refusal to bargain here, but the record disclosed persistent attempts by varying methods to interfere with the right of self-organization in circumstances from which the Board or the court found or could have found the threat of continuing and varying efforts to attain the same end in the future.

An appropriate order in the circumstances of the present case would go no further than to restrain respondent from any refusal to bargain and from any other acts in any manner interfering with the Guild's efforts to negotiate. So far as respondent's past conduct may be thought to have had any effect on the rights guaranteed by § 7, such consequences would be effectively prevented by the pro-

hibition of such an order without drawing it so broadly as to forbid all other unrelated unfair labor practices.

Only a word need be said of that part of the Board's order requiring the posting of notices. We have often held that the posting of notices advising the employees of the Board's order and announcing the readiness of the employer to obey it is within the authority conferred on the Board by § 10(c) of the Act "to take such affirmative action . . . as will effectuate the policies" of the Act. See *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268; *H. J. Heinz Co.* v. *National Labor Relations Board*, *supra*.

But respondent argues that the authority of the Board does not extend to the requirement, such as was made in this case, that the employer confess violation of the Act by a published announcement that he will "cease and desist" from violating it. See, *National Labor Relations Board* v. *Abell Co.*, 97 F. (2d) 951; *Burlington Co.* v. *National Labor Relations Board*, 104 F. (2d) 736; *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87; *Art Metals Construction Co.* v. *National Labor Relations Board*, 110 F. (2d) 148, 151, 152; *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. (2d) 291, 293. Since the Board has changed its practice and now provides in all orders that the employers' notices shall state "that he will not engage in the conduct from which he is ordered to cease and desist" it consents that the present order be modified accordingly.

What we have said requires a reversal of the judgment below and the reestablishment of the Board's order with the following exceptions:

Paragraph 1(b) of the order will be modified so as to require only that respondent shall cease and desist from

"In any manner interfering with the efforts of the Guild to bargain collectively with Express Publishing Company, San Antonio, Texas".

Paragraph 2(b) of the order will be modified by striking from it the words:

"will cease and desist as aforesaid"

and substituting for them the words

"will not engage in the conduct from which it is ordered to cease and desist as aforesaid."

It is so ordered.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 442.—October Term, 1940.

National Labor Relations Board, Petitioner, *vs.* Express Publishing Company. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 3, 1941.]

Mr. Justice Douglas.

I think the cease and desist order should be enforced in full.

Respondent did not object in its answer to the Board's petition before the Circuit Court of Appeals to that portion of the Board's order which the Court now modifies. So far as the briefs disclose it did not make any such objection in the Circuit Court of Appeals. Nor did respondent question the propriety of that provision of the order or challenge the power of the Board to make it either in its brief or in its oral argument here. Any controversy on that issue before this Court is therefore not attributable to respondent. For on the record before us it must be assumed that respondent wholly acquiesces in that phase of the Board's action. In that posture of the case, it is plain this this Court will not customarily raise *sua sponte* objections which respondent did not choose to make. We are, of course, asked to enforce an order of the Board. And I suppose we might refuse to enforce provisions of such an order which are patently *ultra vires*, even though the other party raises no objection but acquiesces in them. But, in my view, this provision of the order is not beyond the power of the Board.

The order as modified restrains respondent from interfering in any manner "with the efforts of the Guild to bargain collectively" with it. But respondent is not restrained from interfering with the employees in the exercise of their rights (a) to self-organization, (b) to form, join, or assist labor organizations, or (c) to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection. These deletions represent the loss of substantial sanctions—sanctions which the expert administrative

agency may well have concluded are basic and essential for protection of the right which this very union has won.

Take the case where an employer is playing ducks and drakes with the National Labor Relations Act. He pays mere lip service to the requirements of the Act while intent on blocking in his plant any effective union action. If that is a faithful representation of his attitude, the mandate of the Act might be wholly frustrated or its enforcement needlessly delayed were the Board merely to order him to cease and desist from interfering "with the efforts" of the union "to bargain collectively". That, without more, might well be wholly ineffective, or so the Board in its discretion might conclude. In fact, it might even be an open invitation to an employer intent on evasion of the spirit and letter of the Act to resort to devious routes to the same end. Employees are dropped—perhaps the leaders of the union; labor spies are employed; a company union is sponsored and financed; new employees are selected who promise not to join the outside union. The purpose is to thwart any effective action by that union. Such obstructive tactics could go on apace and yet no "efforts" of the union "to bargain collectively" need be denied. The employer could continue the so-called negotiations with the union, perhaps reach at least a tentative agreement with it, and yet in a myriad of ways undermine it if the breadth of the cease and desist order were delimited.

Perhaps this is to conjure up remote and hypothetical situations. Perhaps that is not this case.[1] But I think it is important to remind that we do not sit as an administrative agency with discretion to adjust the remedies accorded by the Act to what we think are the needs of particular cases, with power to write or rewrite administrative orders in light of what we think are the exigencies of specific situations, with the duty to pass on the wisdom of administrative policies. Congress has invested the Board, not us, with discretion to choose and select the remedies necessary or appropriate for the evil at hand.

The Board concluded (so we must presume) that its order directing respondent to bargain collectively with the Guild need be

[1] It should, however, be noted that the Board concluded that "the respondent had no intention of negotiating in good faith with the Guild nor of entering into a collective bargaining agreement with it." And the Circuit Court of Appeals observed, " . . . we think there was evidence to support the finding of the Board that respondent had determined in advance never to agree to anything."

buttressed by broad protective provisions good against any and all methods of evasion. Formal recitals could hardly make that plainer than it is.[2] And clearly those provisions are no broader than the wide reaches of the controversy disclosed in this record.

Whether the remedy chosen by the Board was reasonably necessary in this case is not for us to determine. Nor is it for us to say what language is adequate to safeguard the labor rights which are in issue. To cut down the language of this order not only substitutes our judgment for that of the Board; it will also result in the creation of a host of uncertainties. The original order makes clear that any attempted evasion, no matter how devious, is banned. As modified the order clearly subtracts from those sanctions. But the precise extent of its dilution remains uncertain. The Board may, of course, in case of future violations institute new administrative proceedings. Yet the method here chosen for settlement of this labor controversy does not promise peace. It invites a prolongation of the dispute which should be deemed to have been settled, with the employer's acquiescence, once and for all. That practical aspect of the matter is of great importance on the merits; and it also emphasizes the seriousness of our intrusion into the administrative domain. See Note (1940) 53 Harv. L. Rev. 472.

Mr. Justice BLACK and Mr. Justice REED join in this opinion.

---

[2] In this connection it should be observed that the Board found that respondent had "interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" by reading to them a statement which "presented a distorted concept" of the employees' rights under the Act. The Circuit Court of Appeals set aside that finding. While the Board did not raise that issue in its petition for certiorari, that episode is nevertheless relevant to the scope of the cease and desist order. If it be assumed, as does the majority, that such a broad order must be founded at least on some evidence that other related unlawful acts "may fairly be anticipated from the defendant's conduct in the past", that episode is of significance. For though it might not of itself support an additional finding of a separate violation of § 8, it certainly is some evidence for the exercise of the Board's expert judgment that the refusal to bargain did not have an improbable relationship to other likely obstructive tactics of a related order.